(12)

No. 02-809 Status: ARGUED
Title: Maryland, Petitioner
v.
Joseph Jermaine Pringle
Docketed: November 27, 2002
Lower Ct: Court of Appeals of Maryland
Case Nos.: (No. 129, Sept. Term 2001)
Decision Date: August 27, 2002

~~Date~~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~
Nov 22 2002	Petition for writ of certiorari filed. (Response due December 27, 2002)
Dec 17 2002	Order extending time to file response to petition to and including January 24, 2003.
Jan 22 2003	Order further extending time to file response to petition to and including February 14, 2003.
Feb 14 2003	Brief of respondent Joseph Jermaine Pringle in opposition filed.
Feb 14 2003	Brief amicus curiae of Ohio and 19 Other States filed.
Feb 14 2003	Motion for leave to proceed in forma pauperis filed by respondent Joseph Jermaine Pringle.
Mar 24 2003	Motion for leave to proceed in forma pauperis filed by respondent GRANTED.
Mar 24 2003	Petition GRANTED.
Apr 15 2003	Extension of time within which to file the joint appendix and petitioner's brief on the merits to and including May 23, 2003.
May 23 2003	Joint appendix filed.
May 23 2003	Brief of petitioner Maryland filed.
May 23 2003	Brief amicus curiae of United States filed.
May 23 2003	Brief amicus curiae of Criminal Justice Legal Foundation filed.
May 23 2003	Brief amici curiae of Ohio, et al. filed.
Jun 12 2003	Extension of time within which to file respondent's brief on the merits to and including July 14, 2003.
Jul 1 2003	Further extension of time within which to file respondent's brief on the merits to and including July 21, 2003.
Jul 18 2003	Brief amicus curiae of American Civil Liberties Union, et al. filed.
Jul 18 2003	Brief of respondent Joseph Jermaine Pringle filed.
Jul 31 2003	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Aug 19 2003	CIRCULATED.
Aug 19 2003	SET FOR ARGUMENT Monday, November 3, 2003
Aug 19 2003	Reply of petitioner Maryland filed. (Distributed)
Aug 25 2003	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Sep 20 2003	Record received from the Circuit Court for Baltimore County. (1 envelope)
Nov 3 2003	Argued. For Petitioner: Gary E. Bair; and on behalf of the United States, as amicus curiae, Sri Srinivasan, Assistant to the Solicitor General, Department of Justice, Washington, DC. For Respondent: Nancy S. Forster.

Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

STATE OF MARYLAND,
Petitioner,

v.

JOSEPH JERMAINE PRINGLE,
Respondent.

On Petition For Writ of Certiorari To The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Where drugs and a roll of cash are found in the passenger compartment of a car with multiple occupants, and all deny ownership, does the Fourth Amendment prohibit a police officer from arresting the occupants of the car?

PARTIES TO THE PROCEEDING

The caption contains the names of all the parties below.

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Petitioner, the State of Maryland, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 370 Md. 525, 805 A.2d 1016 (2002) (App. 1a-49a). The opinion of the Court of Special Appeals of Maryland is reported at 141 Md. App. 292, 785 A.2d 790 (2001) (App. 50a-77a). The opinion of the Circuit Court for Baltimore County denying Pringle's motion to suppress is unreported. (App. 78a-79a).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on August 27, 2002. (App. 1a). This petition is filed within 90 days as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:
Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 7, 1999, at 3:16 a.m., Officer Jeffrey Snyder of the Baltimore County Police Department stopped a Nissan Maxima for speeding. (App. 2a-3a, 50a). In the vehicle were Donte Partlow, the driver and owner, as well as Respondent Pringle, the front seat passenger, and Otis Smith, the back seat passenger. (App. 3a).

When Partlow opened the glove compartment to search for his vehicle registration, Officer Snyder saw a large quantity of rolled up money. (App. 3a). Officer Snyder then asked for and received Partlow's consent to search the vehicle. (App. 3a). The search uncovered $763.00 in cash from the glove compartment, and five baggies containing suspected cocaine, found inside a back seat armrest. (App. 3a).

All three occupants of the car denied ownership of the drugs and money, and all were arrested and taken to the

station house. (App. 3a-4a). After waiving his *Miranda*[1] rights, Pringle confessed that the drugs belonged to him, and that neither Partlow nor Smith knew he had the cocaine. (App. 4a). Partlow and Smith were released, and Pringle was charged with possession with intent to distribute cocaine. (App. 4a).

A hearing was held on Pringle's motion to suppress evidence on March 23, 2000. (App. 78a). The suppression court ruled that the officer had probable cause to arrest Pringle and that Pringle's statement was properly obtained. (App. 79a). On April 11, 2000, Pringle was convicted by a jury of possession with intent to distribute cocaine and possession of cocaine. (App 1a). Pringle was sentenced to a term of ten years' incarceration on May 9, 2000. (App. 1a).

On appeal, a three-judge panel of the Court of Special Appeals of Maryland affirmed Pringle's convictions. (App. 50a-77a). A majority rejected Pringle's assertion that the police lacked probable cause to arrest him and that his confession was the fruit of an illegal arrest. (App. 56a-61a). The majority concluded: "The circumstances were sufficient to constitute probable cause to make an arrest." (App. 61a). One judge dissented, finding probable cause to arrest Pringle lacking. (App. 66a-77a). This judge found significant the fact that, although Pringle "may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver around the back of his seat, and pull down the arm rest." (App. 74a).

On certiorari review, the Court of Appeals of Maryland

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

reversed, in a four-to-three decision. (App. 1a-49a). According to the majority, "the mere finding of cocaine in the back armrest" was insufficient to establish probable cause to arrest a front seat passenger. (App. 21a). The majority discounted the discovery of the cash in the glove compartment because the glove compartment was closed until the driver searched for the vehicle registration. (App. 22a). Without citation, the majority noted: "Simply stated, a policy of arresting everyone until somebody confesses is constitutionally unacceptable." (App. 22a).[2]

Three judges dissented, stating at the outset that: "The majority's holding that the police officers lacked probable cause to arrest [Pringle] for possession of cocaine is based primarily upon an erroneous blending of the probable cause standard for an arrest and the sufficiency of evidence standard for a conviction." (App. 36a). The dissent found probable cause to arrest Pringle given that three men were traveling in a vehicle around 3:00 a.m. with a large amount of cash and several baggies of cocaine, and, further, that the location of the drugs and money would lead a reasonable officer to conclude that the three had joint constructive possession of the contraband. (App. 38a). The dissent concluded its discussion of probable cause: "I fear that the majority's holding today will, in effect, 'unduly hamper law enforcement' in this State." (App. 46a) (quoting *Brinegar v. United States*, 338 U.S. 160, 176

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[2]The majority then addressed the issue of attenuation, finding no causal break between the arrest and the confession under *Brown v. Illinois*, 422 U.S. 590 (1975). (App. 24a-33a). That finding is not challenged here.

(1949)).

REASONS FOR GRANTING THE WRIT

As a practical matter, the court below has created a per se rule that any time a police officer discovers contraband secreted in a car occupied by several persons, the officer lacks probable cause to arrest any of the passengers. This decision should not be allowed to stand and, indeed, should be reviewed by this Court for several reasons. First, although this Court has set forth the general standards for assessing probable cause, it has not ruled on the standards for determining the issue in the context of multiple suspects. Second, because this Court has never addressed the issue of probable cause as it relates to multiple persons found in the vicinity of drugs, the lower courts have reached conflicting results in similar factual circumstances. Third, this is a frequently recurring and important issue that requires this Court's definitive ruling.

I. This Court's Probable Cause Precedent Does Not Resolve the Issue in the Multiple-Suspect Context Here.

This Court has not squarely addressed the probable cause issue before it here, i.e., whether in a multi-suspect case arising out of a car stop, the police have probable cause to arrest all occupants of the vehicle when contraband is found in the passenger compartment. Further, there is some tension between this Court's more general probable cause to arrest decisions and those that appear to require a more particularized showing before someone may lawfully be arrested. With this case, however, that gap in the law can be filled.

Over half a century ago, this Court delineated the general standards to assess probable cause in the context of warrantless arrests. *See Brinegar v. United States*, 338 U.S. 160 (1949). The standard is less than would justify conviction for the crime, but it is more than "bare suspicion." *Id.* at 175 (citing *Locke v. United States*, 11 U.S. (7 Cranch) 339, 348 (1813)). Harkening back to *Carroll v. United States*, 267 U.S. 132 (1925), the Court concluded:

> Probable cause exists where "the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.

Id. at 175-76 (quoting *Carroll*, 267 U.S. at 162).

Brinegar balances protection for the privacy of law-abiding citizens with the "fair leeway" in the enforcement of the law necessary for the community's protection. *Id.* at 176. As the Court summed up:

> The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

Id.

In the years since *Brinegar* was decided, the Court has consistently preserved this delicate balance. *See, e.g., Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979); *Gerstein*

v. Pugh, 420 U.S. 103, 111-12 (1975); *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Draper v. United States*, 358 U.S. 307, 312-13 (1959).

The determination of probable cause requires that the totality of the circumstances be assessed. *See Illinois v. Gates*, 462 U.S. 213, 230-31 (1983). Such circumstances are to be viewed "not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Id.* at 232. Even observations that might be "readily susceptible to an innocent explanation" are to be considered in the Fourth Amendment determination. *United States v. Arvizu*, 122 S. Ct. 744, 751 (2002). Moreover, the inferences drawn by law enforcement officers should be given "due weight" by a reviewing court. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

These principles relating to probable cause generally have been developed and applied to a single suspect, where the issue was simply whether there was the necessary quantum of evidence to satisfy the Fourth Amendment standard. Other cases, however, have been decided in the context of whether probable cause to arrest one person necessarily gives the police the requisite justification to arrest an associate or companion of the arrestee.

Just one year before *Brinegar* was decided, this Court addressed this point in *United States v. Di Re*, 332 U.S. 581 (1948). There, a rear seat passenger visibly held counterfeit gas ration coupons he told officers he received from the driver, Buttitta. *Id.* at 583. The passenger to the right of the driver was Di Re, who did nothing other than sit in the car. *Id.* On these facts, this Court ruled that the arrest of Di Re was not supported by probable cause,

noting that "whatever suspicion might result from Di Re's mere presence seems diminished, if not destroyed, when Reed, present as the informer, pointed out Buttitta, and Buttitta only, as a guilty party." *Id.* at 594. Because Buttitta was singled out, probable cause did not extend to Di Re.

Thirty years later, in a different context, the Court built upon the foundation of *Di Re* in *Ybarra v. Illinois*, 444 U.S. 85 (1979). In that case, a patron of the Aurora Tap Tavern was searched while officers were executing a search warrant at the premises after having seen drugs on the person of the bartender and behind the bar. *Id.* at 87-88. Finding the search illegal, this Court stated: "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person." *Id.* at 91.

Taken together, *Ybarra* and *Di Re* have been understood to stand for the proposition that probable cause must be examined on an individualized basis, and not by a person's mere proximity to someone else suspected of criminal activity. More recently, however, this Court cast some doubt on this proposition in the context of a car search where both a driver and passengers were present. In *Wyoming v. Houghton*, 526 U.S. 295, 297 (1999), a car was stopped for speeding and driving with a faulty brake light. After developing probable cause to search the car based on the driver's admission to using drugs, the officer searched the purse on the back seat belonging to passenger Sandra Houghton. *Id.* at 298. Distinguishing both *Ybarra* and *Di Re*, the Court upheld the search. *Id.* at 303. The Court reasoned that a car passenger "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or evidence of their

wrongdoing." *Id.* at 304-05.

Although *Houghton* was decided in the context of the automobile exception to the warrant requirement, it has been understood as a departure from the principles of *Di Re* and *Ybarra*. Not before the Court in *Houghton*, but at issue in the present case, is whether probable cause exists to arrest passengers as well as the driver when contraband is found secreted in the passenger compartment of a vehicle. Given the tension between the individualized suspicion cases of *Ybarra* and *Di Re*, as opposed to the "common enterprise" approach of *Houghton*, it is understandable how lower courts have reached opposite results on factually similar cases. The present case can be used to harmonize these decisions.

II. The Lower Courts Are in Conflict on the Issue of Assessing Probable Cause in Multi-Suspect Cases.

The lower federal and state courts have struggled with applying the probable cause standard in the context of multi-suspect arrests, leading to differing and thus conflicting results. The decision below is typical of one view, which stresses the importance of probable cause being linked to a specific individual. Other courts have focused less on a particular person, looking rather to more generalized notions of probable cause. This confusion is understandable given that this Court has never directly confronted the question of probable cause in a factual context like the present one, and its prior decisions in somewhat analogous situations have given support to both positions held by the lower courts.

Relying on *Di Re*, the Maryland court below found probable cause lacking to arrest Pringle. (App. 19a-20a).

As the Maryland court stated: "The Supreme Court held that Di Re's mere presence in a vehicle involved in criminal activity, without more, did not cause him to lose his right to be free from a search of his person." (App. 20a). Presumably, the Maryland court below would have upheld the arrest of the driver and owner of the car, but believed that Pringle's "mere presence" in the car did not justify his arrest.

Stressing the importance of probable cause being linked to a specific individual, other courts have also relied upon *Di Re* in ruling that an officer did not have probable cause to arrest a passenger present in a vehicle where drugs or other contraband were found. Typical is *People v. Foster*, 788 P.2d 825 (Colo. 1990), where the police arrested both the driver and passenger of a pickup truck that was transporting a suspected stolen motorcycle. *Id.* at 826-27. Believing *Di Re* to be the controlling precedent, the Supreme Court of Colorado held that the mere presence of the passenger, Foster, did not provide the officer with probable cause to arrest him, even where the passenger acknowledged that he was aware of the motorcycle in the back of the truck. *Id.* at 829. Other courts have relied upon *Di Re* in similar circumstances. *See, e.g., Rogers v. State*, 586 So. 2d 1148, 1151-52 (Fla. App. 1991) (no probable cause to arrest front-seat passenger of minivan when drugs found in pocket behind each of front seats); *State v. Jacobs*, 704 S.W.2d 300, 301-02 (Mo. App. 1986) (no probable cause to arrest back-seat passenger for underage alcohol offense when open and unopen cans of beer found in front seat floor area).

Di Re has also been relied upon in other multi-suspect contexts. In *People v. Harshbarger*, 321 N.E.2d 138 (Ill. App. 1974), officers received information that Robert

Leads had a large amount of marijuana in his possession. *Id.* at 139. When police went to Leads's house, three other persons, including Harshbarger, were seated in the living room. *Id.* Detecting a strong odor of burning marijuana, the officers arrested all four men. *Id.* Relying upon *Di Re*, the Illinois court concluded the arrest of Harshbarger was unlawful, because "[h]e was merely one of four persons sitting in the living room of a house in which the officers thought they smelled burning marijuana." *Id.* at 140. More recently, *Harshbarger* was relied upon by the Texas Court of Criminal Appeals to invalidate an arrest under similar circumstances. *See State v. Steelman*, 2002 WL 31398545 at *5 (Tex. Crim. App. Oct. 23, 2002) (en banc).

In like regard, other courts have relied upon *Ybarra*. In particular, these courts look to the language in *Ybarra* that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." 444 U.S. at 91. In *State v. Jenison*, 442 A.2d 866 (R.I. 1982), a female passenger was arrested when police discovered cash and a weapon in the trunk of the car in which she was riding. *Id.* at 870. The Supreme Court of Rhode Island found probable cause lacking to arrest the passenger, relying on *Ybarra* for the proposition that her presence with someone suspected of criminal activity (the driver) did not, by itself, establish probable cause. *Id.* at 874. Similarly, a Texas state court relied upon *Ybarra* in holding that probable cause did not exist to arrest a passenger when narcotics were found on the driver after a dog alerted to the presence of drugs in a car stopped for speeding. *See Leday v. State*, 3 S.W.3d 667, 672 (Tex. App. 1999).

Still other courts, however, have reached the opposite result in multiple-suspect cases, recognizing that probable

cause does not mean more probable than not with respect to the identity of a particular person as the offender. In *State v. Horton*, 625 N.W.2d 362 (Iowa), *cert. denied*, 122 S. Ct. 288 (2001), for example, the court looked to *Brinegar* rather than *Di Re* in analyzing probable cause where a driver and passenger were stopped. After the driver admitted to the officer that there were some "roaches" in the ashtray and the officer saw marijuana butts there, the passenger Horton was arrested. *Id.* at 363. Horton argued that the actions of the driver could not be imputed to her, but the court ruled as follows: "The officers in Horton's case could have reasonably believed the marijuana had been smoked by Horton, her companion, both, or perhaps neither." *Id.* at 367.

In an Arkansas case, the police stopped a car with four occupants, and the officer smelled the odor of marijuana coming from the vehicle. *Brunson v. State*, 940 S.W.2d 440, 441 (Ark.), *cert. denied*, 522 U.S. 898 (1997). The court ruled that the smell gave rise to probable cause to believe an offense was being committed, as well as probable cause to arrest all occupants of the vehicle. *Id.* at 442. Rejecting Brunson's argument that "individualized" probable cause was needed to arrest him, the court stated: "Such an argument would lead to the illogical conclusion that none of the four occupants could have been arrested even though the smell of marijuana or its smoke was emanating from the enclosed space of the vehicle where all four occupants were present." *Id. Accord United States v. Buckner*, 179 F.3d 834, 838-39 (9th Cir. 1999) (passenger may be arrested when marijuana found secreted in car; reliance on *Ybarra* rejected), *cert. denied*, 528 U.S. 1094 (2000); *Fernandez v. Perez*, 937 F.2d 368, 370 (7th Cir. 1991) (probable cause exists to arrest all occupants of car

when metal-piercing bullets found in trunk); *Blake v. State*, 772 So. 2d 1200, 1206-07 (Ala. Crim. App. 2000) (individualized suspicion not needed to arrest driver or passenger when odor of burning marijuana emanates from car); *Jackson v. State,* 643 A.2d 1360, 1365-66 (Del. 1994) (all occupants of vehicle may be arrested when contraband found in non-secretive location; reliance on *Di Re* rejected), *cert. denied*, 513 U.S. 1136 (1995); *State v. Mitchell*, 482 N.W.2d 364, 368 (Wis. 1992) (probable cause to arrest two persons in car where officer smelled marijuana and saw smoke inside vehicle).

In analogous contexts, courts have ruled that probable cause to arrest one person is not negated simply because there may also be probable cause to arrest someone else. Where a car was involved in a fatal accident, and both occupants were taken to the hospital, the officer had probable cause to involuntarily extract blood from *both*, even though only one could have been driving. *See People v. Sutherland*, 683 P.2d 1192, 1196 (Colo. 1984). Where police suspect two people of the child-abuse murder of a young child, they may arrest either or both. *See State v. Johnson*, 682 So. 2d 385, 387 (Ala. 1996). *See also Matter of Grand Jury Investigation*, 692 N.E.2d 56, 57 (Mass.) (in investigating apparent rape of profoundly retarded and autistic young woman who lived with parents and brother, police had probable cause to believe either brother or father committed crime, and blood sample could be ordered from both), *cert. denied*, 525 U.S. 873 (1998); *Commonwealth v. Sangricco*, 379 A.2d 1342, 1344 (Pa. 1977) (where both Sangricco and estranged wife of shooting victim were present at time of shooting, police had probable cause to order neutron activation analysis test on both). *See generally* 2 Wayne R. LaFave, *Search and*

Seizure § 3.2(e) at 65 (3d ed. 1996) (probable cause exists in such situations because of "an investigative function which is served by the making of arrests").

These latter cases illustrate why it was reasonable, in this case, for Officer Snyder to arrest all three of the occupants of the car he stopped. Having seen a large roll of bills and a quantity of crack cocaine in the car, the officer may not have been certain who possessed the money and drugs, but he certainly was reasonable in believing that one or more of the current occupants were guilty of a crime. Experience, logic, and common sense suggest that when there are three occupants in a car, there is a fair probability that they are "engaged in a common enterprise with the driver," *Houghton*, 526 U.S. at 304, and all are implicated. Thus, under *Brinegar* and its progeny, the officer had probable cause to arrest Pringle (as well as the other two occupants).

Yet as shown above, there is a conflict in the lower courts on this issue in multiple-suspect cases, leading to results such as in the fractured decision below. The Court should take this opportunity to resolve the conflict, thereby ending the confusion engendered by cases such as *Di Re* and *Ybarra* on the one hand and *Brinegar* and *Houghton* on the other.

III. The Multiple-Suspect Probable Cause Issue is Frequently Recurring and of Great Importance to Law Enforcement and the Public.

Over two decades ago, this Court decided a different issue in a case with similar facts to the present one. In *New York v. Belton*, 453 U.S. 454, 455-56 (1981), all four men in the lawfully stopped car were arrested when the

officer smelled burnt marijuana and saw an envelope marked "Supergold." This Court had no occasion then to address the validity of the arrests, but that threshold issue needs to be resolved now. Countless times each day, officers make traffic stops and uncover contraband in multi-passenger situations. Police need the clarity of authority to know who may be arrested in such cases. The same issue arises when a trained drug sniffing dog alerts to the presence of narcotics in a vehicle, and officers need to know whether it gives rise to probable cause to arrest all of the occupants. *Cf. Florida v. Royer*, 460 U.S. 491, 506 (1983) (had police used dog to scan luggage, "a positive result would have resulted in his justifiable arrest on probable cause").

As shown above, this probable cause question in multiple suspect cases reaches far beyond the vehicle stop context. Any time the police are investigating a crime–be it driving while intoxicated, child abuse, rape, or murder–they must have the authority to arrest two suspects, even if only one could have committed the crime, where they know that one of the two (but not the other) *did* commit the crime. The sentiments expressed in a similar case apply with equal force here: "Suffice it to say that today's opinion will affect hundreds of thousands of future cases, because according to the majority, anytime there are two or more people involved at a crime scene, and there is any ambiguity as to which of them is the perpetrator, officers lack probable cause to arrest any of them. This is preposterous." *State v. Steelman,* 2002 WL 31398545 at * 16 (Tex. Crim. App. Oct. 23, 2002) (en banc) (Keasler, J., dissenting).

In sum, the decision below alters the balance this Court struck in *Brinegar*. By setting the probable cause bar

higher, the court below has, as the dissent below points out, "unduly hamper[ed] law enforcement." (App. 46a).

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Maryland.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
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November 22, 2002

APPENDIX

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APPENDIX A:

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APPENDIX A

Court of Appeals of Maryland.

Joseph Jermaine PRINGLE,
v.
STATE of Maryland.

No. 129, Sept. Term, 2001.

Aug. 27, 2002.

Argued before BELL, C.J., ELDRIDGE, RAKER, WILNER, CATHELL, HARRELL and BATTAGLIA, JJ.

CATHELL, J.

On April 11, 2000, Joseph Jermaine Pringle, petitioner, was convicted by a jury in the Circuit Court for Baltimore County of possession with intent to distribute cocaine and possession of cocaine. On May 9, 2000, petitioner was sentenced to a term of ten years incarceration without the possibility of parole.[1]

Petitioner appealed this conviction to the Court of Special Appeals. On appeal, petitioner asserted, *inter alia*, that there was no probable cause to support his arrest

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[1] By order dated April 4, 2001, a three-judge panel of the Circuit Court for Baltimore County modified petitioner's sentence. The effect of the modification was a change in petitioner's no-parole sentence to a ten-year sentence with the possibility of parole.

which led to his conviction. On November 28, 2001, the intermediate appellate court held that there was probable cause to arrest petitioner and affirmed his conviction. *Pringle v. State*, 141 Md.App. 292, 785 A.2d 790 (2001).

On March 6, 2002, we granted petitioner's Petition for Writ of Certiorari. *Pringle v. State*, 368 Md. 239, 792 A.2d 1177 (2002). Petitioner presents one question for our review:

> "Did the police have probable cause to arrest the petitioner where he was a front seat passenger in a vehicle also occupied by the driver/owner and a rear seat passenger, and in which a sum of money was found inside the closed glove compartment and a quantity of drugs was found hidden behind a rear armrest, and where there was neither the odor of drugs within the vehicle nor any other indicia of drug activity?"

We reverse. We hold that there was not probable cause to support the arrest of the petitioner in the car when he had not admitted ownership of the drugs. Specifically, we hold that there was not probable cause to arrest petitioner, who was not the owner of the vehicle, when petitioner was merely the front seat passenger and the only evidence supporting the arrest was a sum of money in the closed front glove compartment and drugs that were hidden from view in the armrest in the backseat of the vehicle.

I. Facts

Officer Jeffrey Snyder of the Baltimore County Police Department testified that at 3:16 a.m. on the morning of August 7, 1999, on his routine patrol in the Reisterstown/Garrison area of Baltimore County, he

conducted a traffic stop. Officer Snyder asked the driver for his license and registration. The driver/registered owner of the car was Donte Carlos Partlow (Partlow). Also in the vehicle were petitioner, the front seat passenger, and Otis Calvin Smith (Smith), the back seat passenger.

When Partlow opened the glove compartment for the vehicle registration, Officer Snyder saw a large amount of rolled up money in the glove compartment. At this time, Officer Snyder did not ask about the money, but went back to his patrol car with Partlow's license and registration to check the Maryland Motor Vehicle Administration computer system for outstanding violations. The computer check did not reveal any violations and Officer Snyder returned to the car, had Partlow exit the vehicle, and issued him an oral warning.

At this time, a second patrol car arrived and Officer Snyder then "asked him [Partlow] if he had anything in the vehicle, any drugs, weapons, narcotics in the vehicle?" Partlow responded that he did not. Officer Snyder then asked for and received permission from Partlow to search the vehicle. Prior to doing so, Officer Snyder asked the other two men in the vehicle, petitioner and Smith, to exit the vehicle and he patted them down. All three men were asked to sit on the curb while he searched the vehicle.

During the search, Officer Snyder seized $763.00 from the glove compartment and five plastic glassine baggies containing suspected cocaine from inside an armrest in the backseat.[2] Officer Snyder questioned all three men about

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[2] The armrest in the backseat was the type that goes up and down. At the time of the stop, the armrest was in the

the ownership of the drugs and money, and told the three men that if no one admitted to ownership of the drugs he was going to arrest them all. None of the men offered any information regarding the ownership of the drugs and/or money, and all three were placed under arrest and transported to the police station.

Sometime between 4:00 and 5:00 a.m., Officer Snyder met with petitioner and, following a waiver of his Miranda rights,[3] obtained an oral and written confession in which petitioner acknowledged that the cocaine belonged to him, that he and his friends were going to a party in Westminster, and that he intended to sell it or "Use it for sex." Petitioner maintained that neither Partlow nor Smith knew of the drugs. Partlow and Smith were released.

At trial, during a suppression hearing,[4] petitioner's counsel argued that petitioners's arrest was unlawful

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upright position and flat against the seat. When Officer Snyder pulled down the armrest he found the drugs, which had been placed between the armrest and the back seat of the car and, absent the pulling down of the armrest, were not visible.

[3] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[4] It is not altogether clear whether the suppression issue was addressed during the trial itself when the admission into evidence of the confession was sought, or at a separate suppression hearing, or both. Petitioner's brief states "at the hearing on the motion to suppress...." Respondent did not challenge that statement.

because it was not supported by probable cause and that his confession should be suppressed as the unlawful fruit of an illegal arrest. The trial court judge agreed with the State that Officer Snyder "had probable cause to make the arrest." After a jury trial, petitioner was found guilty and sentenced to ten years incarceration without the possibility of parole.[5] The Court of Special Appeals affirmed the conviction.

II. Discussion

a. Probable Cause

In the case *sub judice,* petitioner is not contending that the vehicle was stopped, or that the vehicle was searched, in violation of the Fourth Amendment's[6] guarantee against unreasonable searches and seizures. Petitioner's only contention is that the police officer did not have probable cause to arrest him; therefore, his confession was the fruit

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[5] As stated, *supra*, petitioner's sentence was modified to a ten-year sentence with the possibility of parole.

[6] The Fourth Amendment of the United States Constitution states:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

of an illegal arrest.

In order for a warrantless arrest to be legal it must be based upon probable cause. We have held that a police officer can arrest an accused without a warrant if the officer has probable cause to believe that a felony has been or is being committed by an alleged offender in the officer's presence. *Woods v. State*, 315 Md. 591, 611-12, 556 A.2d 236, 246 (1989); *Nilson v. State*, 272 Md. 179, 184, 321 A.2d 301, 304 (1974). Maryland Code (1957, 1996 Repl.Vol.), Article 27, section 594B, then stated, in relevant part:[7]

> "**§ 594B. Arrests without warrants generally.**
>
> (a) *Arrest for crime committed in presence of officer*.--A police officer may arrest without a warrant any person who commits, or attempts to commit, any felony or misdemeanor in the presence of, or within the view of, such officer.
>
> (b) *Arrest for crime apparently committed in presence of officer*.--A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the officer's presence or within the officer's view, may arrest without a warrant any person whom the officer may reasonably believe to have committed such offense.
>
> (c) *Arrest for crime committed generally*.--A police officer may arrest a person without a warrant if the officer has probable cause to believe that a felony has

[7] Article 27, section 594B was repealed by Acts of 2001, Chapter 10, section 1, effective October 1, 2001. Present provisions in respect to arrest generally are found in Title 2 and Subtitle 2 of the Criminal Procedure Article.

> been committed or attempted and that such person has committed or attempted to commit a felony whether or not in the officer's presence or view."

We examined the application of probable cause to a warrantless arrest in *Collins v. State*, 322 Md. 675, 589 A.2d 479 (1991), when we stated:

> "Probable cause, we have frequently stated, is a nontechnical conception of a reasonable ground for belief of guilt. *Doering v. State*, 313 Md. 384, 403, 545 A.2d 1281 (1988); *Edwardsen v. State*, 243 Md. 131, 136, 220 A.2d 547 (1966). A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion. *Woods, supra*, 315 Md. at 611, 556 A.2d 236; *Sterling v. State*, 248 Md. 240, 245, 235 A.2d 711 (1967); *Edwardsen, supra*, 243 Md. at 136, 220 A.2d 547. Our determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge. *State v. Lemmon*, 318 Md. 365, 379, 568 A.2d 48 (1990); *Doering, supra*, 313 Md. at 403-04, 545 A.2d 1281. Probable cause exists where the facts and circumstances taken as a whole would lead a reasonably cautious person to believe that a felony had been or is being committed by the person arrested. *Woods, supra*, 315 Md. at 611, 556 A.2d 236; *Stevenson v. State*, 287 Md. 504, 521, 413 A.2d 1340 (1980); *Duffy v. State*, 243 Md. 425, 432, 221 A.2d 653 (1966). Therefore, to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences

from those facts, reasonably warranted the intrusion.

Lemmon, supra, 318 Md. at 380, 568 A.2d 48."

Id. at 680, 589 A.2d at 481. To determine whether an officer had probable cause in a specific case, "the reviewing court necessarily must relate the information known to the officer to the elements of the offense that the officer believed was being or had been committed." *DiPino v. Davis*, 354 Md. 18, 32, 729 A.2d 354, 361 (1999).

Petitioner was charged and eventually convicted of violating sections 286--possession of cocaine with intent to distribute--and 287--possession of cocaine.[8] In order for petitioner's arrest to be valid, the officer must have had probable cause at the time of the arrest to believe that petitioner was in possession of cocaine. Possession is defined in Maryland Code (1957, 1996 Repl.Vol., 2001 Supp.), Article 27, section 277(s) as "the exercise of actual or constructive dominion or control over a thing by one or more persons ." This statute recognizes, as we have held, that possession may be constructive or actual, exclusive or joint. *State v. Leach*, 296 Md. 591, 596, 463 A.2d 872, 874 (1983).

While the quantum of evidence is different, we have discussed possession issues in several sufficiency of the evidence cases, which are instructive in respect to the definition of possession. In *Garrison v. State*, 272 Md. 123, 321 A.2d 767 (1974), we examined the meaning of

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[8] Maryland Code (1957, 1996 Repl.Vol., 2001 Supp.), Art. 27 §§ 286 and 287.

"possession" in reference to section 287 of Article 27.[9] Although we said that the State was not required to show knowledge by the defendant,[10] we found that in order for the State to establish possession it must establish evidence that "must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited narcotic drug in the sense contemplated by the statute, *i.e.*, that she exercised some restraining or directing influence over it." *Id.* at 142, 321 A.2d at 777. We held that the State had not met the standard of legal sufficiency because there was no

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[9] We note that *Garrison* was concerned with the sufficiency of the evidence at trial. In examining probable cause for an arrest, we have stated that "[t]he rule of probable cause is a non-technical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion." *Doering v. State*, 313 Md. 384, 403, 545 A.2d 1281, 1290 (1988). While the State is required to provide more evidence at trial for conviction than for a probable cause showing in respect to arrest at a motion's hearing, the elements of an offense are the same whether a police officer is making a probable cause determination prior to an arrest or whether the State is trying to prove the elements at trial to establish the guilt of a defendant.

[10] This was later overruled by *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988) in which we held that the State must prove that the defendant had knowledge of the controlled dangerous substance to prove possession.

evidence which directly or inferentially demonstrated that the defendant had exercised actual or constructive dominion or control, solely or jointly, over the narcotics.

In *State v. Leach*, 296 Md. 591, 463 A.2d 872 (1983), Stephen Leach and his brother, Michael Leach, were convicted of possession of a controlled dangerous substance. On appeal, Stephen Leach challenged the sufficiency of the evidence in his conviction for possession. The essential question was whether Stephen constructively possessed drugs and drug paraphernalia found in Michael's apartment at 3712 Erdman Avenue in Baltimore City. Prior to their arrest, Stephen and Michael had been the objects of ongoing police surveillance. Stephen had been seen entering and leaving the premises at 3712 Erdman Avenue. Relying on information from an informant, the police obtained a search warrant for 3712 Erdman Avenue. On February 27, 1980, the police arrested Michael outside of the premises and then searched the one-bedroom apartment. In the bedroom, police found drugs and drug paraphernalia. Also found in the apartment were an electric bill and a telephone bill, both in Michael's name. A 30-X magnifier and a large table scale were located on the kitchen table. The police then proceeded to the 4000 block of Poursė Avenue, where they arrested Stephen while he was walking a dog. Stephen gave his address as 3712 Erdman Avenue at booking and before a Commissioner. The Department of Motor Vehicles had 3712 Erdman Avenue as Stephen's address but his employer had two addresses for Stephen, 3712 Erdman Avenue and 4002 Pourse Avenue. Rita Cushner testified that Stephen lived at 4002 Pourse Avenue with her and her daughter from a few weeks before Thanksgiving in 1979 until late May of 1980.

Finding that the evidence against Stephen was insufficient to establish that he exercised dominion or control over the narcotics, we stated:

> "Here the fact finding that Michael was the occupant of the Premises precludes inferring that Stephen had joint dominion and control with Michael over the entire apartment and over everything contained anywhere in it. Even though Stephen had ready access to the apartment, it cannot be reasonably inferred that he exercised restraining or directing influence over PCP in a closed container on the bedroom dresser or over paraphernalia in the bedroom closet. If one assumes that the scales and magnifier found in plain view in the kitchen at the time of the search were always kept there, still those items are intrinsically innocuous. They become significant by association with drugs or cutting agents."

Id. at 596, 463 A.2d at 874. We held that the evidence was legally insufficient to convict Stephen.

In *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988), Leonard Dawkins was arrested in a hotel room and charged with possession of heroin and possession of controlled paraphernalia. At trial, after the presentation of evidence, the court instructed the jury on the elements of possession. Dawkins requested that the court instruct the jury that knowledge is an element of possession; the court declined. We reversed, holding that knowledge is an element of possession. Judge Eldridge, writing for the Court, stated:

> "Under the Maryland statute, § 277(s) defines 'possession' as 'the exercise of actual or constructive *dominion or control* over a thing by one or more

persons.' (Emphasis added). Some courts, in analyzing similar language, construe 'dominion and control' to require 'knowledge.' For example, in *State v. Burns*, 457 S.W.2d 721 (Mo.1970), the Missouri Supreme Court determined that 'possession' included a knowledge element. It reasoned that in order to 'control' an object, the defendant must know of its existence. The court stated: 'Knowledge of the existence of the object is essential to physical control thereof with the intent to exercise such control and such knowledge must necessarily precede the intent to exercise or the exercise of such control.' 457 S.W.2d at 724.

"We find persuasive the reasoning of the above-reviewed cases. In particular, we agree that an individual ordinarily would not be deemed to exercise 'dominion or control' over an object about which he is unaware. Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control."

Id. at 648-49, 547 A.2d at 1046 (footnote omitted).

Therefore, in order to prove "possession," the State must prove the elements of "dominion or control" and "knowledge." These elements were applied in two other, more recent, sufficiency of the evidence cases, *White v. State*, 363 Md. 150, 767 A.2d 855 (2001) and *Taylor v. State*, 346 Md. 452, 697 A.2d 462 (1997). In *White*, Sean White was a passenger in a vehicle that was stopped by a Maryland State trooper for a traffic offense. After conducting a pat-down of the driver, on whom the state trooper discovered marijuana, the state trooper searched the vehicle. In the trunk of the vehicle, in a sealed box containing pots and pans, the state trooper discovered 194

grams of cocaine. Both the driver/owner of the vehicle and White were arrested at that time. Among other charges, White was charged with possession of cocaine and possession of cocaine with intent to distribute. White was convicted and his conviction was affirmed by the Court of Special Appeals.

Before this Court, White contended that there was not sufficient evidence to support his conviction for possession of the cocaine found in the box of pots and pans located in the trunk. Writing for the Court, Judge Harrell stated:

"There is a substantial question whether the evidence in this case establishes beyond a reasonable doubt that Petitioner [White] had knowledge of the presence of the cocaine hidden in a sealed box of pots and pans found inside the trunk of Charity's vehicle. Although Petitioner, by virtue of being a passenger in Charity's vehicle, was in close proximity to the cocaine, on this record *he did not have a possessory right in, or control over, the vehicle.* Additionally, Charity's behavior, when contrasted with Petitioner's, is distinguishable. Charity, who arguably knew that 194 grams of cocaine were in the trunk of his automobile, was so nervous that Lewis [the state trooper] claimed he could see Charity's carotid artery pulsing in his neck and his heart pounding through his shirt. No such dramatic observations, however, were attributed to Petitioner, who claims ignorance as to the existence of the contraband. Although Lewis did state that Petitioner would not look at him during questioning, his compatriot, Corporal Bromwell, noted nothing unusual about Petitioner's behavior, and testified that

Petitioner remained quiet or engaged in small talk while Lewis searched Charity's vehicle.

"Assuming *arguendo* that there was evidence in the record sufficient to establish beyond a reasonable doubt the knowledge requirement for possession, we conclude nonetheless that there was not sufficient evidence establishing that Petitioner exercised dominion and control over the cocaine....

. . .

"After reviewing the record in White's case in a light most favorable to the State, we hold the circumstantial evidence upon which the State's case rested was insufficient as a matter of law to support, beyond a reasonable doubt, that Petitioner exercised dominion or control over the cocaine found inside the pots and pans box in the trunk of Charity's automobile. If the rational fact finder was not permitted to infer reasonably in *Leach [supra*] that Stephen exercised dominion and control over the PCP found in a closed container on a bedroom dresser in an apartment to which he had ready access, than *a rational fact finder may not infer in the present case that Petitioner had dominion and control over the cocaine found in a sealed box in the trunk of a vehicle in which he apparently had limited access and no possessory interest.* Having no such interest in the vehicle places Petitioner in a somewhat similar situation to that of the defendant in *Livingston [v. State*, 317 Md. 408, 564 A.2d 414 (1989)], for the mere existence of cocaine located in the trunk of Charity's vehicle was not sufficient to prove that Petitioner, a front seat passenger, exercised dominion and control over the contraband. Although Lewis's

testimony regarding the air fresheners and the co-defendants's inconsistent stories might form the basis for a strong suspicion as to Petitioner's culpability, the evidence, and reasonable inferences drawn therefrom, does not reach the standard of guilt beyond a reasonable doubt. Without more, we hold that the Petitioner's convictions for importation of cocaine, possession of cocaine, and possession of cocaine with the intent to distribute cannot stand."

White, 363 Md. at 164-67, 767 A.2d at 863-64 (footnote omitted) (some emphasis added).

In *Taylor*, the Ocean City police entered a motel room after receiving a complaint about a possible controlled dangerous substance violation. Upon entering the room, Richard Taylor, petitioner before this Court, was lying on the floor with his face away from the door.[11] The police received permission to search the room for "dope," and the police discovered a bag of marijuana in two different bags, neither belonging to Taylor, and rolling papers in the wallet of one of the other occupants of the room. Taylor was charged with possession of marijuana and he was convicted.

After reviewing the sufficiency of the evidence, we held that the evidence was insufficient to establish possession. Judge Raker, writing for the Court, stated:

"We agree with Taylor that, under the facts of this case, any finding that he was in possession of the marijuana could be based on no more than speculation or conjecture. The State conceded at trial

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[11] The police testified that they did not know whether Taylor was sleeping or awake.

that no marijuana or paraphernalia was found on Petitioner or in his personal belongings, nor did the officers observe Petitioner or any of the other occupants of the hotel room smoking marijuana. Viewing the evidence in the light most favorable to the State, Officer Bernal's testimony established only that Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been smoked, and that Taylor was in proximity to contraband that was concealed in a container belonging to another.

"The record is clear that Petitioner was not in exclusive possession of the premises, and that the contraband was secreted in a hidden place not otherwise shown to be within Petitioner's control.... Possession requires more than being in the presence of other persons having possession; it requires the exercise of dominion or control over the thing allegedly possessed....

"... The evidence in this case does not establish that Taylor had knowledge of the presence of the marijuana concealed in Myers's carrying bags.

"As clearly indicated by *Dawkins*, without knowledge of the presence of marijuana in the room, it is not possible for Petitioner to have exercised dominion or control over the marijuana, another required ingredient of the crime of possession. The facts and circumstances, considered in the light most favorable to the State, do not justify any reasonable inference that Petitioner had the ability to exercise, or in fact did exercise dominion or control over the contraband found in the room. Although the evidence in this case might form the basis for a strong suspicion of

Petitioner's guilt, suspicion is insufficient to support a conviction. '[M]ere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or property on which it is found, is insufficient to support a finding of possession.' *Murray v. United States*, 403 F.2d 694, 696 (9th Cir.1969) (internal quotation marks and citations omitted). In other words, there must be additional proof of knowledge and control to sustain a conviction for possession.

. . .

"In sum, the evidence presented in this case was insufficient to establish that Taylor was in possession of the marijuana seized from Myers's carrying bags. Taylor's presence in a room in which marijuana had been smoked, and his awareness that marijuana had been smoked, cannot permit a rational trier of fact to infer that Taylor exercised a restraining or directing influence over marijuana that was concealed in personal carrying bags of another occupant of the room. Because Petitioner was in joint rather than exclusive possession of the hotel room, his mere proximity to the contraband found concealed in a travel bag and his presence in a room containing marijuana smoke were insufficient to convict him."

Taylor, 346 Md. at 459-63, 697 A.2d at 465-68 (footnote omitted) (alteration in original).

While the cases we have discussed above involve the sufficiency of the evidence, they, nonetheless, establish the law for determining some possession issues, even at the probable cause to arrest stage. Moreover, we have also had occasion to apply the elements of possession to cases,

like the case at bar, where the probable cause to make an arrest for possession is being challenged. In *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), Wesley Livingston was one of three people in a vehicle that was stopped for speeding. Livingston, who was not the owner of the vehicle, was sitting in the backseat. During the stop for speeding, the state trooper saw two marijuana seeds on the floor of the front passenger's side. The state trooper arrested all three occupants of the car and upon searching Livingston pursuant to the arrest, the state trooper discovered cocaine and marijuana in Livingston's pocket. Livingston was charged with possession of cocaine with intent to distribute, possession of cocaine, and possession of marijuana. He moved to suppress the evidence as the product of an illegal arrest but the motion was denied by the trial court. Livingston was convicted on all three counts and he appealed.

While we found that the two marijuana seeds on the floor provided the state trooper with probable cause that a misdemeanor was being committed in his presence, the question became who could the state trooper arrest for the offense. We held that the two marijuana seeds on the floor in the front of the vehicle did not provide the state trooper with probable cause to arrest Livingston and then conduct a search incident to that arrest. We stated:

> "Merely sitting in the backseat of the vehicle, Livingston did not demonstrate to the officer that he possessed any knowledge of, and hence, any restraining or directing influence over two marijuana seeds located on the floor in the front of the car.
>
> "Without more than the mere existence of two marijuana seeds located in the front of the car, we hold that the police officer lacked probable cause to arrest Livingston, a rear seat passenger, for possession of marijuana. Thus, Livingston's arrest was illegal, and the contraband seized in the search arising out of that arrest must be suppressed."

Id. at 415-16, 564 A.2d at 418 (footnote omitted).

We further examined when a police officer has probable cause to make a warrantless arrest in *Collins v. State*, 322 Md. 675, 589 A.2d 479 (1991). On September 20, 1988, at 3:00 a.m., Officer Holmes of the Salisbury Police Department noticed five men standing about five feet from a Mustang that was parked in the entrance to a car dealership. The Mustang was not owned by Collins. Officer Holmes approached the men and asked what they were doing. The driver of the Mustang, Steven Lewis, stated that they were looking at the BMWs. Officer Ewing arrived on the scene to assist Officer Holmes. Officer Ewing saw a 35 mm film canister on the rear seat of the Mustang and he asked one of the men to retrieve the canister for him. Inside the canister, Officer Ewing found over twenty cellophane wrapped packets containing cocaine. Officers Ewing and Holmes then arrested all five men for possession of cocaine. Collins alleged at a suppression hearing that there was not probable cause for his arrest. The trial court denied his suppression motion and Collins was convicted of possession of cocaine.

Before this Court, Collins once again asserted that there was not probable cause for his arrest. Specifically, relying on *Livingston, supra*, he asserted that his mere proximity to incriminating evidence, or to an offender, is not enough for a finding of probable cause for arrest. Furthermore, Collins asserted that there was no further factual basis to connect him to the drugs or to having committed any crime. We first discussed the United States Supreme

Court case of *United States v. Di Re*, 332 U.S. 581, 68 S.Ct. 222, 92 L.Ed. 210 (1948), in which the Supreme Court had examined the arrest of Di Re, who was seated in the passenger seat of a vehicle from which an informant had purchased counterfeit gasoline ration coupons from the driver and the backseat passenger was seen holding gasoline ration coupons. The police arrested and searched all three men. The Supreme Court held that Di Re's mere presence in a vehicle involved in criminal activity, without more, did not cause him to lose his right to be free from a search of his person. We then discussed our holding in *Livingston, supra*, and we held that there was not probable cause to arrest Collins for possession. We stated:

> "Considering the totality of the circumstances, we conclude that the mere presence of a closed film canister in a car found to contain cocaine was legally insufficient to support the requisite probable cause to arrest Collins as he stood outside of the vehicle. No testimony suggested that he arrived at the lot in the car, that he had even been in the vehicle, or that he knew the suspected cocaine was in the back seat of the car. Even if the police had probable cause to arrest Lewis or Parker for unlawful possession, there was no probable cause to arrest Collins. As there was no evidence which criminally linked Collins to either the car, or to the film canister, there was no probable cause to believe that he committed or attempted to commit a felony as required by Art. 27, § 594B."

Collins, 322 Md. at 682-83, 589 A.2d at 482.

As stated, *supra*, to determine whether a police officer had probable cause to make a warrantless arrest, we evaluate the totality of the circumstances as to whether the facts and circumstances, with rational inferences derived

therefrom, would lead a reasonable person to believe that a felony has been or is being committed. In a specific case, we apply the elements of the alleged offense to the facts and circumstances of that case to determine whether the police officer had probable cause to make a warrantless arrest of a particular individual for that specific offense.

In the case *sub judice*, applying the facts and circumstances of this case to the elements of possession requiring "knowledge" of the controlled dangerous substance and "dominion or control" over the substance, and relying on the holdings of our previous cases, specifically our holding in *Livingston,* we find that the police did not have probable cause to arrest petitioner. Similar to the situation in *Livingston*, where the defendant was sitting in the backseat and two marijuana seeds were in open view on the floor in the front seat, petitioner in this case was sitting in the front seat and the cocaine was found hidden from view in the armrest in the back seat of the car. Without additional facts available to the officer at that time that would tend to establish petitioner's knowledge and dominion or control over the drugs, the mere finding of cocaine in the back armrest when petitioner was a front seat passenger in a car being driven by its owner is insufficient to establish probable cause for an arrest for possession.[12] As we stated in *Livingston*:

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[12] Under respondent's reasoning, if contraband was found in a twelve-passenger van, or perhaps a bus or other kind of vehicle, or even a place, *i.e.*, movie theater, the police would be permitted to place everyone in such a vehicle or place under arrest until some person confessed

> "Merely sitting in the backseat of the vehicle, Livingston did not demonstrate to the officer that he possessed any knowledge of, and hence, any restraining or directing influence over two marijuana seeds located on the floor in the front of the car.
>
> "Without more than the mere existence of two marijuana seeds located in the front of the car, we hold that the police officer lacked probable cause to arrest Livingston, a rear seat passenger, for possession of marijuana."

Livingston, 317 Md. at 415-16, 564 A.2d at 418 (footnote omitted).

The State points to the additional fact that the police officer saw a large amount of rolled up money in the glove compartment located in front of petitioner. Money, without more, is innocuous. In *Leach*, we held that there was insufficient evidence to convict Stephen Leach, the brother of Michael Leach, when the drugs were found in Michael Leach's bedroom. In that case, the police had also discovered a large table scale and a magnifier in plain view on the kitchen table. We held that the table scale and magnifier were intrinsically innocuous and that they only became significant when associated with drugs. The money in the case at bar was not in the plain view of the police officer or petitioner; rather it was located in a closed glove compartment and only came into view when the glove compartment was opened by the car's owner/driver in response to the officer's request for the car's

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to being in possession of the contraband. Simply stated, a policy of arresting everyone until somebody confesses is constitutionally unacceptable.

registration. There are insufficient facts that would lead a reasonable person to believe that petitioner, at the time of his arrest, had prior knowledge of the money or had exercised any dominion or control over it. We hold that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine.

As noted, *supra*, we hold that there was not probable cause to arrest petitioner at the time of the routine traffic stop. Under the "fruit of the poisonous tree doctrine,"[13] evidence tainted by Fourth Amendment violations may not be used directly or indirectly against the accused. *See Miles v. State*, 365 Md. 488, 781 A.2d 787 (2001). The exclusionary rule "applies to any 'fruits' of a constitutional violation-- whether such evidence be tangible ... or confessions or statements of the accused obtained during an illegal arrest and detention." *United States v. Crews*, 445 U.S. 463, 470, 100 S.Ct. 1244, 1249, 63 L.Ed.2d 537, 545 (1980) (footnote omitted).

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[13] The "fruit of the poisonous tree" doctrine is an aspect of the exclusionary rule, a judicially imposed sanction for violations of the Fourth Amendment right against improper arrests and unreasonable searches and seizures in prosecutions, and requires courts to suppress evidence that is the product of unlawful governmental activity. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); *Ferguson v. State*, 301 Md. 542, 483 A.2d 1255 (1984).

b. Attenuation

The State has not argued that the confession was admissible as a result of attenuation. We do not believe that the parties have properly presented that issue to this Court. Even if properly presented, the concept would not be applicable under the circumstances here present.

In that respect, we turn now to whether, if attenuation had been properly presented, the taint of the illegal arrest was sufficiently attenuated to permit the admission into evidence of petitioner's confession, which would otherwise be barred as the fruit of a poisonous tree because the arrest was effectuated without probable cause. *See Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

In her dissenting opinion in *Miles*, Judge Raker, examining the attenuation doctrine, stated:

> "It is black letter law that once a defendant has demonstrated the existence of a primary illegality[14] ... the burden shifts to the government to prove that the resulting evidence was not derived from that illegality....
>
> "The government can demonstrate that the taint of the primary illegality has been purged in three ways: (1) by demonstrating that the causal nexus between the illegality and the subsequently discovered evidence is sufficiently attenuated so that the taint has been dissipated, *see Wong Sun*, 371 U.S. at 487-88, 83

[14] In the case at bar, the warrantless arrest was effectuated without probable cause.

> S.Ct. at 417, 9 L.Ed.2d 441, (2) by demonstrating that the subsequently discovered evidence was obtained from a source independent of the primary illegality, *see United States v. Wade*, 388 U.S. 218, 242, 87 S.Ct. 1926, 1940, 18 L.Ed.2d 1149 (1967); or (3) by demonstrating that, absent the illegality, the State still inevitably would have discovered the later evidence. *See Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 2509, 81 L.Ed.2d 377 (1984)....[15]
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> . . .
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> "In examining the *Wong Sun* attenuation doctrine, courts repeatedly utilize consequential language, such as 'exploitation,' 'direct result,' 'chain of events,' 'link,' 'nexus,' 'impetus,' 'connection,' 'causation,' 'inducement,' 'basis,' and 'product' to describe the necessary relationship between a primary illegality and evidence derived therefrom. In assessing attenuation, courts examine the facts and circumstances of each case in considering four factors: the giving of *Miranda* warnings; the temporal proximity of the illegality to the confession; the presence of intervening circumstances; and the purpose and flagrancy of the illegal police conduct. *See Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S.Ct.

[15] The doctrines of independent source and inevitable discovery, two additional ways for the government to demonstrate that the taint of the primary illegality has been purged, have not been raised in this case.

2254, 2261-62, 45 L.Ed.2d 416 (1975)."[16]
Miles, 365 Md. at 575-78, 781 A.2d at 837-39 (some citations omitted) (footnote omitted). In the case sub judice, we hold that there was no attenuation between petitioner's arrest and his confession that would sufficiently purge the taint of the illegal arrest.

The giving of the *Miranda* warnings, the first of the *Brown* factors, does not, alone, attenuate the taint of an illegal arrest.[17] Nor does the *Brown* temporal proximity attenuator provide a clear-cut test for determining at what point the taint has been purged by the lapse of time. In *Ferguson v. State*, 301 Md. at 550, 483 A.2d at 1259 (1984), this Court stated:

> "[T]he Supreme Court has understandably not articulated any mathematically precise test for determining at what point the taint has been purged by the lapse of time. Recent decisions, however, indicate that time spans ranging from two hours to six

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[16] We adopted the test for attenuation, as set forth in *Brown*, in *Ferguson v. State*, 301 Md. 542, 549, 483 A.2d 1255, 1258 (1984). In *Scott v. State*, 366 Md. 121, 149, 782 A.2d 862, 878 (2001), we stated that, "No one factor is dispositive ."

[17] In *Brown*, 422 U.S. at 603, 95 S.Ct. at 2261, 45 L.Ed.2d at 427, the Supreme Court held the receiving of *Miranda* warnings to be an important factor in assessing the voluntariness of a confession, but also stated that a defendant's waiver of *Miranda* rights alone to be insufficient to purge the taint of a defendant's illegal arrest.

> hours between an unlawful arrest and the challenged evidence constitute insufficient attenuation. Because a lengthy detention can be used to exploit an illegal arrest at least as easily as a brief detention, the temporal proximity factor has been labeled 'ambiguous' ...." [Citations omitted.]

In the case *sub judice*, even though petitioner was given and waived his *Miranda* rights prior to his confession, he, nonetheless, confessed in the station house just over two hours after the illegal arrest. As stated, *supra*, while the timing of the confession is not dispositive as to the issue of attenuation, the mere two-hour passage of time, during which petitioner remained in custody, does not establish attenuation. In this case, the traffic stop occurred at approximately 3:00 a.m., the arrest shortly thereafter, and the three men were transported to the station house. It was not long after the arrival at the station house, after his illegal arrest, that petitioner was placed in a room, questioned, and confessed. The time between the illegal arrest and the confession is the natural time that likely would have lapsed in such a situation. The fact that petitioner confessed approximately two hours after the police officer at the scene stated that he was going to arrest all three passengers unless one confessed to being in possession of the contraband, and then established that he meant what he said by arresting all of them, does not, as the majority for the Court of Special Appeals urges, "generat[e] an issue of attenuation." In this case, where the officer had initially established a coercive effect by stating that he was going to arrest all three unless one confessed and had indeed arrested all of them when there was no initial confession, this two-hour time span constitutes insufficient attenuation and the fact that

petitioner received and waived his *Miranda* warnings prior to his confession does not amount to attenuation. The coercion began alongside the highway at the point of arrest, and by its very nature continued to the point of the custodial confession.[18]

In these circumstances, there was no meaningful intervening circumstance, the next *Brown* factor to consider, that prompted petitioner to confess to the police.[19] Clearly, it was the officer's arrest of all three

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[18] When the officer stated that he was going to arrest all three unless one confessed, and then did so, the coercion continued, unbroken, from the point of the illegal arrest during the entire period when all three persons remained under arrest.

[19] "[A]n intervening circumstance is an event that breaks the causal connection between the unlawful conduct and the derivative evidence. Properly considered, the focus should more appropriately be on the accused to determine whether there was any event that contributed to his ability to consider carefully and objectively his options and to exercise his free will." *Ferguson*, 301 Md. at 551, 483 A.2d at 1259 (citing *Taylor v. Alabama*, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982)) (holding that six hours between the unlawful arrest and challenged evidence constituted insufficient attenuation and that there was no intervening circumstance present when the accused was visited by his girlfriend and a male companion after the unlawful arrest but before the confession). *But cf. Johnson v. Louisiana*, 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) (intervening circumstance was present when after

men, specifically petitioner's illegal arrest, that induced and directly led to petitioner's confession. The record shows that petitioner was arrested, transported, and questioned. The time it took to transport petitioner to the station house, and the time petitioner remained there prior to being questioned does not dissipate the taint of the illegal arrest or constitute an intervening circumstance. The circumstance, the arresting of all three persons and keeping them under arrest until one of them confessed, was a continuing coercive factor. There was never an intervening circumstance. Petitioner's confession flowed directly from the illegal arrest and, moreover, was made during the continuation of that illegal arrest and its coercive effect. There was no intervening event; there was, instead, a continuation of the illegal event.

The final factor under *Brown*, the purpose and flagrancy of the illegal police conduct, here the officer's arrest without probable cause and transportation of petitioner to the station house, further supports a lack of attenuation. "This factor effectuates the deterrence policy of the exclusionary rule by providing an incentive for police to engage in lawful conduct. Obvious examples of purposeful and flagrant conduct are dragnet operations and pretextual arrests." *Ferguson*, 301 Md. at 552, 483 A.2d at 1260 (citations omitted). In the case *sub judice*, the apparent purpose of arresting all three men was to exploit their situation by transporting them to the station house where, perhaps, one of the men would be prepared to

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an unlawful arrest but prior to a lineup identification, a magistrate committed the accused and conducted the lineup).

confess in order to clear the other persons arrested. That is, in fact, what occurred. Officer Snyder stated that he would arrest all three men unless someone confessed; he then arrested all three men, including petitioner, whom he had no probable cause to arrest, and exploited the situation, *i.e.*, holding all three men in custody to generate a confession. This final *Brown* factor argues against any attenuation in the case *sub judice*.

The purpose of the Fourth Amendment exclusionary rule is to deter unlawful police conduct[20] and that purpose would be violated if we were to allow law enforcement officers to effectuate an illegal arrest and admit into

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[20] In *Ferguson*, 301 Md. at 548, 483 A.2d at 1258, we discussed the deterrent effect of the exclusionary rule:

> "This standard reflects a deterrence-based policy, which is '[t]he core rationale consistently advanced ... for extending the Exclusionary Rule to evidence that is the fruit of unlawful police conduct....' *Nix v. Williams*, 468 U.S.[431, 442], 104 S.Ct. 2501, 2508-09, 81 L.Ed.2d 377, 386-87 (1984). Despite the high societal costs in allowing persons obviously guilty to go unpunished for their crimes ... the Court in *Wong Sun* reasoned that suppression was the appropriate remedy so as to deter police from exploiting their illegal conduct." [Citations omitted.] [Alteration in original.]

See also United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960).

evidence a confession from the person illegally arrested. "Maryland law demands that confessions 'be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary.'" *Reynolds v. State*, 327 Md. 494, 504, 610 A.2d 782, 786 (1992) (quoting *Hillard v. State*, 286 Md. 145, 150, 406 A.2d 415, 418 (1979)). Emphasizing the deterrent purposes of the exclusionary rule further supports another *Brown* factor, discussed in a subsequent Supreme Court case, and our holding that unlawful police conduct, like the conduct in the case *sub judice*, should not be rewarded by admitting evidence derived from that improper police conduct.

In *Miles, supra,* Judge Battaglia, writing for this Court noted that, "The United States Supreme Court further refined its analysis of the attenuation doctrine set forth in *Brown v. Illinois*, to include an exploration of voluntariness. *See United States v. Ceccolini*, 435 U.S. 268, 276-77, 98 S.Ct. 1054, 1060, 55 L.Ed.2d 268, 277 (1978)."[21] *Miles*, 365 Md. at 523, 781 A.2d at 807. The

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[21] *Ceccolini*, which involved the voluntary aspect of a witness's testimony as a break in the chain of taint flowing from the unlawful conduct stands for the proposition that a person's action in providing evidence or testimony should be considered as an intervening factor under the attenuation doctrine because a person has the "attributes of will, perception, memory and volition." *Ceccolini*, 435 U.S. at 277, 98 S.Ct. at 1060, 55 L.Ed.2d at 277 (quoting *Smith v. United States*, 324 F.2d 879, 881 (D.C.Cir.1963)). Thus, we consider, along with the *Brown* factors, the voluntariness of petitioner's confession.

Court of Special Appeals found petitioner's confession to be voluntary because he waived his *Miranda* rights and then made a written and oral confession more than two hours after the police officer stated that if none of the three men claimed ownership of the drugs and/or money he was going to arrest all of them, and then did so. The intermediate appellate court found petitioner's statement to be voluntary under Maryland law, the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and Article 22 of the Maryland Declaration of Rights, and held that the police officer's statement that "you are all going to get arrested" did not amount to an inducement for petitioner's subsequent confession. Furthermore, the Court of Special Appeals concluded that, "Appellant's transfer from the crime scene to the police station also disrupted the nexus between the alleged inducement and confession," and that the time lapse between the arrest and the confession show that there was attenuation and voluntariness on the part of petitioner to confess. We disagree.

Petitioner's confession was, to reiterate, the product of his illegal arrest and the improper and continuing coercion arising from that illegal arrest that existed up until the point of the confession. Any element of voluntariness evidenced by petitioner's waiver of his *Miranda* rights and subsequent confession does not, ultimately, dissipate the taint of the illegal arrest and the continuing improper coercion. The temporal proximity of the illegal arrest, along with the police officer's statement, which effect continued, does not attenuate, via the confession, the taint of the illegal arrest. In examining the facts and circumstances of this case under the *Brown* factors, petitioner's confession at such a proximate time to the

illegal arrest, and while the improper coercive influence continued, without more facts does not support attenuation and, therefore, the confession was the fruit of an illegal arrest.

III. Conclusion

In order for the warrantless arrest of petitioner for possession to be legal, there must be probable cause as applicable to the elements of the offense of possession. Looking at the totality of the circumstances, and after examining our case law, we conclude that there was not probable cause to arrest petitioner for possession.

The totality of the circumstances of the facts of this case, as interpreted under the *Brown* factors and the further consideration of voluntariness, clearly show that the necessary severing of the relationship between the primary illegality and the evidence derived therefrom to satisfy attenuation, even if the issue had been properly presented to this Court, does not exist. While petitioner was given his *Miranda* warnings, an application of the remaining *Brown* factors and a consideration of voluntariness, in light of the continuing inducement and the confession's proximity in time to the illegal arrest and the coercion, makes clear that the temporal proximity between the illegal arrest and the confession, the lack of intervening circumstances and the purposefulness of the illegal police conduct all indicate a direct causal nexus between the illegal arrest for lack of probable cause and petitioner's confession used by the State at trial.

Therefore, we hold that the arrest of petitioner was illegal and that there were insufficient facts and circumstances to prove petitioner's confession was

adequately attenuated from the point of his illegal arrest to the giving of the confession.

JUDGMENT REVERSED; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY BALTIMORE COUNTY.

RAKER, J., concurring:

I concur in the Court's opinion and in the judgment. Like Judge Cathell, writing for the Court, and Judge Sonner, dissenting in the Court of Special Appeals, *Pringle v. State*, 141 Md.App. 292, 785 A.2d 790 (2001), I am convinced that the police lacked probable cause to arrest petitioner.[22] I write separately to express my view that the dissent misconstrues the rationale of the majority opinion.

Contrary to the repeated assertion by the dissent that the majority erroneously blends the probable cause standard with the sufficiency of evidence standard, the Court is well aware of the basic and elemental difference in the quantum of proof to support probable cause and that which is necessary to support a conviction. The majority reiterates and applies the well-recognized standard for probable cause: "A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." Maj. op. at

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[22] I agree also with the Court's conclusion that the confession was the product of an illegal arrest. *See Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S.Ct. 2254, 2261-62, 45 L.Ed.2d 416 (1975).

5-6 (quoting *Collins v. State*, 322 Md. 675, 680, 589 A.2d 479, 481 (1991)). Probable cause, a nontechnical common sense evaluation of the totality of the circumstances, nonetheless requires a reasonable ground for belief of guilt. In order to find probable cause for possession of a controlled dangerous substance, an arresting officer must have reasonable grounds to believe that a suspect knowingly exercised dominion or control over the substance. The majority merely looks to this Court's jurisprudence as guidance to elucidate the concept of possession and its discussion of dominion or control. The standard for probable cause, on the one hand, and sufficiency of the evidence, on the other, remains unchanged.

Apparently, proximity to concealed drugs is sufficient for the dissent to find probable cause to arrest. *See* Diss. op. at 2, 3 n. 3. Although it may be sufficient under certain circumstances, the discovery of three men riding in a car in the early morning hours, with some rolled money in a closed glove box and drugs hidden from view in a back arm rest, without more, hardly constitutes probable cause to arrest a front seat passenger who has no possessory interest in the automobile.

I cannot improve upon Judge Sonner's analysis in his dissent below:

> Mindful of *Garrison* and its progeny, I believe the majority has stopped far short of considering whether Pringle, in any way, knowingly exercised dominion or control over the secreted contraband, and has resorted instead to "speculation or conjecture." Although Pringle, like Folk, may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver

around the back of his seat, and pull down the arm rest. And unlike Folk, Pringle was not sitting in a closed car that emanated the pungent, easily detectable smell of marijuana, which were critical facts in Judge Moylan's analysis sustaining Folk's conviction thirty years ago. Although the majority [of the Court of Special Appeals] attaches some significance to the large roll of currency found in the glove compartment, located in front of Pringle's seat, cash, in and of itself, is innocuous and certainly less suspicious than the scales and cutting tools discounted by the Court of Appeals in *Leach*. Further, there was no showing whatsoever that Pringle, as a passenger in the car, had any connection to, or knowledge of, the money found within the glove compartment of someone else's car.

Pringle v. State, 141 Md.App. at 316, 785 A.2d at 804 (internal citations omitted).

BATTAGLIA, J. in which WILNER and HARRELL, JJ., join, dissenting.

I respectfully dissent.

The majority's holding that the police officers lacked probable cause to arrest the petitioner for possession of cocaine is based primarily upon an erroneous blending of the probable cause standard for an arrest and the sufficiency of evidence standard for a conviction. While the majority hastily acknowledges the differences between these standards, see maj. op. at fn. 9, it devotes most of its attention to citing and discussing legal authority for issues involving the standard of legal sufficiency and gives only

brief consideration to two (more applicable, albeit distinguishable) opinions concerning the requisite probable cause for a valid warrantless arrest. For these reasons, and the reasons articulated herein, I respectfully dissent.

Arrests without warrants are constitutionally and statutorily permitted pursuant to Article 27, Section 594B of the Maryland Code as long as the officer has probable cause to believe that a crime has been committed and the officer reasonably believes the arrestee committed that crime.[1] Determining whether probable cause exists to

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[1] Maryland Code (1957, 1996 Repl.Vol.), Article 27, Section 594B, now found at Section 2-202 of the Criminal Procedure Article, states:

(a) Arrest for crime committed in presence of police officer.--A police officer may arrest without a warrant any person who commits or attempts to commit any felony or misdemeanor in the presence of, or within the view of, such police officer.

(b) Arrest for crime apparently committed in presence of officer.--A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the officer's presence or within the officer's view, may arrest without a warrant any person whom the police officer may reasonably believe to have committed the crime.

(c) Arrest from crime committed generally.--A police officer may arrest a person without a warrant if the officer has probable cause to believe that a felony has been committed or attempted and that

support a warrantless arrest requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation "in light of the facts and circumstances found to be credible by the trial judge." *See State v. Lemmon*, 318 Md. 365, 379, 568 A.2d 48, 55 (1990). The police must have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion." *Id.* at 380, 568 A.2d at 56. It is this "totality of the circumstances" test under which a probable cause determination is properly reviewed.

In the present case, the information known to the officer at the time of the arrest was that three men were traveling in a vehicle (a Nissan Maxima) around 3:00am with a large stash of cash in the glove compartment and several plastic baggies of cocaine in the rear armrest. None of the men claimed ownership of the drugs or money, yet the location of the drugs and money in the Nissan Maxima would lead a reasonable officer in similar circumstances to believe that the three men had joint constructive possession over the contraband. In my view, this establishes probable cause for the arrest of each of the three individuals, including the petitioner.

What more would the majority require to justify an arrest? From the emphasis in its opinion, the majority would seemingly require police officers to consider whether the evidence gathered would be legally sufficient for a possession conviction *prior* to making the arrest.

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such person has committed or attempted to commit a felony whether or not in the officer's presence or view.

The majority asserts that "[w]hile the cases we have discussed above involve the sufficiency of the evidence, they, nonetheless, establish the law for determining some possession issues, even at the probable cause to arrest stage;" yet *cites no authority* for this proposition. Granted, the arresting officer must comprehend that which "possession of a controlled dangerous substance" entails.[2] The officer should not, however, be required to base a determination to arrest on the ability of the State to meet the standard of legal sufficiency for a conviction; nor should the reviewing courts measure the propriety of the arrest by such a standard.[3]

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[2] Possession is defined as "the exercise of actual or constructive dominion or control over a thing by one or more persons." *See* Maryland Code (1957, 1996 Repl. Vol., 2001 Supp.), Article 27, section 277(s).

[3] The majority opinion discusses several cases involving the standard of legal sufficiency for possession. See maj. op. pp. 5-16. (discussing, in order, *Garrison v. State*, 272 Md. 123, 321 A.2d 767 (1974), which held that the State did not meet the standard of legal sufficiency for possession of narcotics because there was no evidence to demonstrate actual or constructive dominion or control over the drugs; *State v. Leach*, 296 Md. 591, 463 A.2d 872 (1983), which held that there existed insufficient evidence to establish constructive possession over the narcotics; *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988), where the Court held that knowledge is an element of possession of narcotics which the State must establish and the court must so instruct the jury; *White v. State*, 363 Md.

Let me be clear on this point: I agree that the legal sufficiency of evidence in possession of narcotics cases requires the State to produce evidence of dominion or control over the narcotic allegedly possessed, and knowledge therewith, *see Moye v. State*, 369 Md. 2, 14, 796 A.2d 821, 828 (2002)(citing *Dawkins v. State*, 313 Md. 638, 649, 547 A.2d 1041, 1046 (1988)), beyond a

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150, 767 A.2d 855 (2001), which held that there existed insufficient evidence to establish beyond a reasonable doubt that the petitioner had knowledge of the presence of cocaine hidden in driver's trunk; and *Taylor v. State*, 346 Md. 452, 697 A.2d 462 (1997), which held that insufficient evidence existed to establish possession of marijuana because there was no evidence that petitioner exercised dominion or control over marijuana or had knowledge of its presence).

With respect to the legal sufficiency of evidence, it is true that "[m]ere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or property on which it is found, *is insufficient to support a finding of possession." Moye, v. State*, 369 Md. 2, 16, 796 A.2d 821, 829 (2002)(emphasis added)(quoting *Taylor v. State*, 346 Md. 452, 460, 697 A.2d 462, 466 (1997)). "There must be additional proof of knowledge and control to sustain a conviction for possession." *Taylor*, 346 Md. at 460, 697 A.2d at 466. Depending on the surrounding circumstances, proximity to the drug or association with the persons or property on which illegal narcotics are found, however, may be sufficient to support probable cause to justify a warrantless arrest.

reasonable doubt. I disagree, however, that the degree of evidence required for a conviction on the charge of possession of narcotics can be equated to that which is required of police officers when making probable cause determinations for warrantless arrests. Courts reviewing such determinations must not confuse or blend the two standards: probable cause for an arrest (a lower standard than legal sufficiency for a conviction) requires the *reasonable belief* that the person arrested had committed or was committing the felony crime of possession of narcotics. As we have oft explained, "probable cause is a nontechnical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify a conviction, but more evidence than that which would arouse a mere suspicion." *Woods v. State*, 315 Md. 591, 611, 556 A.2d 236, 246 (1989)(quoting *Nilson v. State*, 272 Md. 179, 184, 321 A.2d 301, 304 (1974)). A police officer who discovers (at 3 a.m.) three passengers in a vehicle which contained several baggies of cocaine in the rear armrest and a large wad of money (arguably, "drug money") in the front glove compartment could reasonably believe that those persons were exercising joint and constructive possession of the contraband in the vehicle, were engaging in drug trafficking, or conspiring to engage in drug trafficking, thus establishing probable cause for the arrest of each individual. Whether the State's Attorney can produce sufficient evidence to demonstrate, beyond a reasonable doubt, actual or constructive dominion or control over the narcotics and knowledge therein to warrant a conviction is another question--one that is properly left to the prosecutor,

initially, and the trier of fact, subsequently.[4]

Notwithstanding the majority's inappropriate emphasis on cases involving the sufficiency of evidence, the majority does cite two cases which, while arguably more on-point, are factually distinguishable. In *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), a state trooper stopped a vehicle for speeding; when the officer spotted two marijuana seeds on the floor of the front passenger side, he arrested all three people in a vehicle. Because Livingston was sitting in the backseat of the vehicle and could not have reasonably manifested dominion or control over the two seeds located on the front passenger side floor, we held that the state trooper could not have probable cause to arrest Livingston for the crime. We stated specifically that *"[w]ithout more than the mere existence of two marijuana seeds located in the front of the car,* we hold that the police officer lacked probable cause to arrest Livingston, a rear seat passenger, for possession of marijuana." *Id.* at 416, 564 A.2d at 418 (emphasis added). In the case *sub judice*, the police officer had more evidence than "the mere existence of two marijuana seeds"--he had several baggies of cocaine in the rear armrest and a large wad of money in the glove

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[4] Article 10, Section 34 of the Maryland Code grants prosecutors the authority to "prosecute ... all cases in which the State may be interested." Md.Code (1957, Repl.Vol.), Art. 10, § 34. Maryland State's Attorneys are entrusted with broad discretion to "institute and prosecute criminal causes." *Beverly v. State*, 349 Md. 106, 121, 707 A.2d 91, 98 (1998)(quoting *Brack v. Wells*, 184 Md. 86, 90, 40 A.2d 319, 321 (1944)).

compartment. It strains credulity to analogize the mere existence of two seeds on the floor of a vehicle to the secreted wad of cash and baggies of cocaine discovered in the present case. That two seeds on the front passenger floor of a vehicle is not enough to establish probable cause to arrest the back seat passenger does not, in my mind, equate to a lack of probable cause when a police officer discovers several baggies of cocaine and a large amount of cash.

Similarly, the facts which led to a finding of lack of probable cause in *Collins v. State*, 322 Md. 675, 589 A.2d 479 (1991), are markedly different than those before us today. In *Collins*, police officers observed five men standing approximately five feet from a Mustang in which a 35 mm film canister containing cocaine was ultimately found. *Id.* at 677, 589 A.2d at 480. The officers arrested all five men for possession of cocaine. *Id.* at 678, 589 A.2d at 480. We held that "[c]onsidering the totality of the circumstances, ... the mere presence of a closed film canister in a car found to contain cocaine [did not] support the requisite probable cause to arrest Collins as he stood outside of the vehicle. *No testimony suggested that he arrived at the lot in the car, that he had even been in the vehicle,* or that he knew the suspected cocaine was in the back seat of the car." *Id.* at 682-83, 589 A.2d at 482 (emphasis added). In the present case, Pringle was not only physically in the car, he was seated in proximity to the cocaine and the money, items about which it was reasonable to believe that Pringle could have had knowledge of or control over. Evaluating the totality of the circumstances, with consideration of the facts as presented to the officer and rational inferences derived therefrom, I believe that probable cause existed to justify

the officer's warrantless arrest of Pringle.

Instead of focusing on the factual scenario presented to the Court, and more apposite, to the police officer, the majority chooses to jump to hypothetical extremes in an attempt to justify its operative heightening of the probable cause standard. In note 12, the majority erroneously asserts that if the Court were to adopt the position proffered by the appellant, then so long as some contraband was found, probable cause would exist, *per se*, and the police could arrest *everyone*, whether in a twelve-passenger van or movie theater. Such an assertion is specious in that the totality of the circumstances test, itself, precludes these sweeping generalizations; instead, it requires a review of the *specific* facts and circumstances presented to the officer at the scene of the purported crime, and if questioned, a ruling regarding the officer's determination based upon these specific facts and circumstances. A court should not, and quite simply cannot, conjecture upon whether probable cause exists in factual situations not before it. Should I choose to entertain the majority's hypotheticals, however, I would unequivocally assert that baggies of cocaine found in one area of a packed movie theater, *without more*, would not constitute probable cause to arrest *everyone* in the theater; I believe that the totality of circumstances test, itself, would preclude a finding of validity in such circumstances.

The majority's attempt, however discrete, to incorporate a higher standard-- that of the sufficiency of evidence-into the properly-applied probable cause standard will only serve to burden the law enforcement community. The majority apparently hopes to create prosecutors out of police officers by forcing law enforcement officers to

guarantee the sufficiency of evidence for conviction on the crime of possession prior to initiating a viable arrest. Just as the standards are different, so are the duties of those who apply them. In the simplest of terms, police officers assist in enforcing the laws by arresting suspected violators, prosecutors assist in enforcing the laws by attempting to secure State-mandated punishment for these violations by presenting evidence which demonstrates, beyond a reasonable doubt, that the accused violated the law.

Certainly police officers must act in accordance with constitutional and statutory policies and procedures, but forcing officers to base their arrests of suspected wrong-doers upon whether a conviction may stand is unacceptable. *See Woods*, 315 Md. at 611, 556 A.2d at 246 (explaining that "whether an arrest for a felony without a warrant is constitutionally valid necessarily turns upon whether, at the moment the arrest was made, the arresting officer or the police acting as a team had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the accused had committed or was committing a felony")(quoting *Nilson*, 272 Md. at 184, 321 A.2d at 304). Again, the decision to *charge* a wrong-doer is within the discretionary purview of the prosecutors, and the decision to *convict*, with the trier of fact. Sufficiency of evidence for conviction may have similar analytical markings with probable cause for arrest, but the two are not synonymous.

In *Wilkes v. State*, 364 Md. 554, 774 A.2d 420 (2001), we quoted the United States Supreme Court's apt

explanation of the conception of probable cause:

> In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.
>
> * * *
>
> Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating ... often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

Id. at 584-85, 774 A.2d at 438 (quoting *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 1310-11, 93 L.Ed. 1879, 1890-91 (1949)); *accord Doering v. State*, 313 Md. 384, 403, 545 A.2d 1281, 1290-91 (1988). Again, I fear that the majority's holding today will, in effect, "unduly hamper law enforcement" in this State. Probable cause, a concept of probabilities, requires only that "the facts and circumstances within the officer's knowledge ... justify the belief of a reasonable person that a crime has been or is being committed" and that the person arrested participated in the crime. *Johnson v. State*, 356 Md. 498, 504, 740 A.2d 615, 618 (1999). The practical considerations on which the officer acted in the case *sub*

judice were reasonable in light of the evidence discovered. I would affirm the holding of the Court of Special Appeals; the circumstances were sufficient to constitute probable cause to arrest the appellant.

Given that I would find sufficient probable cause to arrest the appellant, the issue of attenuation would be immaterial. The majority's conclusion regarding lack of probable cause, however, provides the occasion to address the issue of attenuation, in view of the fact the petitioner confessed. The occasion to address the attenuation issue must be exercised by the trial court in the first instance, rather than an appellate court, because questions of this nature are necessarily "fact-specific." *See United States v. Burton*, 288 F.3d 91, 100 (3d Cir.2002).

I would be remiss, however, if I neglected to comment upon the flawed attenuation analysis proffered by the majority in this case. First, while I agree that "an individual's waiver of Miranda warnings taken alone would be insufficient to purge the taint of the original unlawful conduct under a Fourth Amendment analysis," a person's voluntary conduct and demonstration of free will may "purge the primary taint" associated with the unlawful conduct. *See Miles v. State*, 365 Md. 488, 526, 781 A.2d 787, 809 (2001)(quoting *Brown v. Illinois*, 422 U.S. 590, 602, 95 S.Ct. 2254, 2261, 45 L.Ed.2d 416, 426 (1975)). As we noted in *Miles*, the Supreme Court refined the attenuation doctrine to include an exploration into the voluntariness of an accused's conduct. *See id.* at 523, 781 A.2d at 807 (citing *United States v. Ceccolini*, 435 U.S. 268, 276-77, 98 S.Ct. 1054, 1060, 55 L.Ed.2d 268, 277 (1978)). Substantively speaking, I agree with the analysis of the Court of Special Appeals concerning the voluntariness of the appellant's confession and the lack of

coercion on the part of the police officers. The statement by the police on which the majority solely relies in finding "coercion" is "you are all going to get arrested."[5] As the Court of Special Appeals correctly stated, "[t]his statement flowed naturally from the attendant circumstances of finding three suspects within the proximity of the illegal drugs." *Pringle*, 141 Md.App. at 308, 785 A.2d at 799. Informing the suspects that they were going to be arrested is not a statement that would be considered exploitative, threatening, or made in an attempt to induce a confession; it was a statement of fact concerning the actions the officer was about to take. With respect to the subsequent confession, the majority failed to consider the voluntariness of the petitioner's conduct, a factor not only

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[5] The majority fails to acknowledge that there was a factual dispute regarding the subsequent part of the alleged statement made by the police officer. The petitioner alleges that prior to the arrests, the officer indicated that if one person would confess the others would be let go. The officer denies making such a statement. Regardless of whether the statement occurred, the Court of Special Appeals correctly points out that it could not have had the inducing or coercing effect that the petitioner alleges because the petitioner did not confess in response to this statement in order to ensure that his friends would not be arrested. All three men were, in fact, taken into custody; appellant's confession occurred more than two hours after the arrest. Appellant's allegation "that he confessed so that his friends would go free is inconsistent with the sequence of events." *Pringle v. State*, 141 Md.App. 292, 309, 785 A.2d 790, 800 (2001).

independently mandated by the *Ceccolini* decision, but one that may be construed as an intervening factor under *Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S.Ct. 2254, 2261-62, 45 L.Ed.2d 416, 427 (1975).[6] Instead, it simply excused the confession as a "product of his illegal arrest and the ... continuing coercion arising from that illegal arrest" without any consideration or deliberation upon the voluntariness of petitioner's conduct. *See*, maj. op. at 27.

For the aforementioned reasons, I respectfully dissent.

Judge WILNER and Judge HARRELL have authorized me to state that they join in the views expressed herein.

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[6] I further disagree with the majority's application of the temporal factor of attenuation analysis and the weight it affords that factor thereto. As we stated in *Miles*, there exists no specific length of time by which the taint of unlawful conduct will be purged. *Miles*, 365 Md. at 527-28, 781 A.2d at 810. The majority, on the one hand, acknowledges that "a lengthy detention can be used to exploit an illegal arrest at least as easily as a brief detention"and thus, the temporal factor is "ambiguous," see maj. op. at 22 (quoting *Ferguson v. State*, 301 Md. 542, 550, 483 A.2d 1255, 1259 (1984)); on the other hand, however, the majority seems to indicate that if "[t]he time between the illegal arrest and the confession is the natural time that likely would have lapsed in such a situation," then the temporal factor should automatically weigh against the State. See maj. op. at 22. I disagree with any implication that the "natural lapse of time" should be a decisive standard in evaluating attenuation. The temporal factor cannot be considered in a vacuum; surrounding facts and circumstances must also be considered.

APPENDIX B

Court of Special Appeals of Maryland.

Joseph Jermaine PRINGLE
v.
STATE of Maryland.

No. 705, Sept. Term, 2000.

Nov. 28, 2001.

Submitted before JAMES R. EYLER, SONNER, and JAMES S. GETTY, (Ret., specially assigned), JJ.

JAMES R. EYLER, Judge.

Appellant, Joseph Jermaine Pringle, was convicted by a jury in the Circuit Court for Baltimore County of possession with intent to distribute cocaine and possession of cocaine. Finding no error, we shall affirm the convictions.

Background

In the early morning of August 7, 1999, Officer Jeffrey Snyder, a Baltimore County police officer, conducted a routine traffic stop of a Nissan Maxima traveling on High Falcon Road. The vehicle was speeding, and the driver was not wearing a seat belt. Officer Snyder asked the driver for his license and registration, and the driver, Donte Partlow, complied with the request. Accompanying Partlow in the car were appellant, sitting in the front

passenger seat, and Otis Smith, sitting in the backseat.

When Partlow opened the glove compartment to retrieve the vehicle registration, Officer Snyder noticed "a large amount of money rolled up." Officer Snyder did not inquire about the money in the glove compartment, but took the license and registration and checked the Maryland Motor Vehicle Administration computer system for any outstanding violations. After the computer check did not reveal any violations, Officer Snyder issued an oral warning to Partlow, who was standing outside the car. At this time, a second police car arrived and parked directly behind Officer Snyder's car. Officer Snyder then inquired of Partlow whether he had "any drugs, weapons, [or] narcotics in the vehicle." Partlow said he did not. Officer Snyder then asked whether he could search the vehicle. Partlow consented to the search, and Officer Snyder asked appellant and Smith to step out of the vehicle. After frisking them, Officer Snyder asked all three men to be seated on the sidewalk curb. In the search, Officer Snyder seized $763.00 from the glove compartment and five plastic baggies of cocaine from the backseat. At the hearing on appellant's motion for suppression, Officer Snyder testified as follows, as to the discovery of the cocaine:

> [DEFENSE COUNSEL]: And you recovered some suspected narcotics?
> [OFFICER Snyder]: Yes.
> [Q.]: And they were recovered from inside an armrest that was located in the back seat?
> [A.]: Yes.
> [Q.]: Did you have--did you have to lift the armrest to get to those drugs?
> [A.]: The back rest was up. The seat is flat. The

armrest goes up and down. It was in the up position. I pushed it down and the drugs were subsequently there.

[Q.]: Okay. So, the back rest was actually in an upright position?

[A.]: Yes.

[Q.]: And the drugs were actually found sandwiched between the armrest and the back seat of the car?

[A.]: Correct.

[Q.]: And you hadn't seen these drugs when you initially approached the car?

[A.]: Correct.

[Q.]: And you shined your light inside and the first time you noticed the drugs was when all three individuals were sitting on the curb, correct?

[A.] Correct.

Officer Snyder questioned the three men as to the ownership of the drugs and money. He advised all three passengers of the car that, unless he knew who possessed the drugs, "you are all going to get arrested." None of the passengers offered any information as to the ownership of the drugs or the money. Officer Snyder, with the assistance of the other officer at the scene, arrested the three men and transported them to the police station.

A few hours later, Officer Snyder met with appellant and, following a waiver of his *Miranda*[1] rights, procured a written confession. Appellant said that the cocaine belonged to him and that he and his friends were on their way to a party where he either intended to sell the cocaine

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[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

or "use it for sex." Appellant went on to say that Partlow and Smith did not know about the drugs.

At trial, Officer Snyder testified, and his testimony was similar to that given at the suppression hearing. Irwin Litopsky, a forensic chemist, also testified and stated that the baggies discovered by Officer Snyder contained .7 grams of cocaine. Detective Frank Massoni, an expert in controlled substances, testified that the drugs were intended to be distributed.

Discussion

1.

Appellant contends that the circuit court erred in permitting Detective Massoni to express an expert opinion. The following colloquy is relevant:

[Prosecutor]: Detective, based upon your expertise in the area of drug distribution, packaging and recognition, do you have an opinion, based upon that expertise, within a reasonable degree of scientific certainty, as to whether the defendant intended to distribute the cocaine that is enclosed in those five zip lock baggies?

[Defense Counsel]: Object.

The Court: Overruled.

[Prosecutor]: Do you in fact have an opinion?

[Witness]: My opinion is that the drugs that were here were going to be distributed in some form or fashion, either to regain money or to be used for sex.

[Prosecutor]: And how is it you come to that opinion, officer?

[Witness]: Based on the statement that I have before

me and the fact that, I mean, we have got five baggies and they are packaged individually, which is the way they are usually packaged for resale, generally twenty dollar bags.

The statement referred to was a statement by appellant that he was going to a party to sell the drugs or exchange them for sex.

Appellant contends that the evidence was inadmissible under Rule 5-704(b) because it constituted an opinion as to appellant's mental state at the time of his arrest. Additionally, according to appellant, the evidence violated the rule that one witness cannot comment on the credibility of another witness, in this case, appellant. We disagree.

The witness never opined as to appellant's state of mind or his credibility. The witness opined that "the drugs were going to be distributed" with no reference to appellant's intent or credibility.

Appellant's reliance on *Hartless v. State*, 327 Md. 558, 611 A.2d 581 (1992), is misplaced. The expert opinion in Hartless is distinguishable from Detective Massoni's testimony. There, the expert explicitly alluded to the defendant's state of mind, writing in a report, "it is my opinion that David Hartless did not intend to murder the victim ...". *Hartless*, 327 Md. at 572-73, 611 A.2d 581. Contrary to appellant's contentions, Detective Massoni did not explicitly or implicitly testify that appellant intended to distribute drugs. Rather, Detective Massoni's opinion related to the quantity and packaging of the drugs that were contained in five zip lock baggies each containing similar amounts of cocaine. The substance of Detective Massoni's testimony was consistent with his area of expertise in drug distribution, packaging, and recognition.

The case of *Bohnert v. State*, 312 Md. 266, 539 A.2d 657 (1988), upon which appellant relies, is also distinguishable from the instant case. After being properly qualified, the expert testified that the victim was abused, basing her opinion solely on the results of questioning the victim; no other objective medical tests or medically recognized syndromes were utilized. *Bohnert*, 312 Md. at 276, 539 A.2d 657. In effect, the expert was testifying to the credibility of the victim, the key witness in the case. The Court recognized, "[i]n a criminal case tried before a jury, a fundamental principle is that the credibility of a witness and weight to be accorded the witness' testimony are solely within the province of the jury." *Id.* at 277, 539 A.2d 657 (citing *Battle v. State*, 287 Md. 675, 685, 414 A.2d 1266 (1980)).

In the instant case, appellant did not testify. The jury had no reason to weigh the testimony and credibility of appellant. Even if appellant had testified, Detective Massoni's remarks would have had a different consequence than the remarks in *Bohnert*. Detective Massoni's statement that the drugs were going to be distributed "either to regain money or to be used for sex" was based on his review of appellant's written statement. The mere repetition of appellant's statement was not a judgment of appellant's credibility. In contrast to *Bohnert*, Detective Massoni based his expert opinion on several factors, including the packaging of the drugs, appellant's statement, and his expertise in drug distribution, packaging and recognition. Similar to our findings in *Wilson v. State*, 136 Md.App. 27, 764 A.2d 284 (2000), Detective Massoni's expert opinion would not impinge on the jury's function to weigh credibility. *Wilson*, 136 Md.App. at 55-68, 764 A.2d 284 (rejecting the argument that four

doctors' expert opinions were inadmissible comments on credibility).

2.

Appellant contends that the circuit court erred in denying his motion to suppress his statement to a police officer. In support of that contention, he argues that the statement was (1) the fruit of an illegal arrest, and (2) the result of an improper inducement.

Probable Cause

The United States Supreme Court instructs us that "the usual traffic stop is more analogous to a so-called 'Terry stop,' ... than to a formal arrest." *Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)); *see also Livingston v. State*, 317 Md. 408, 411, 564 A.2d 414 (1989). "Therefore, stopping a vehicle for a speeding [or seat belt] violation and detaining its occupants does not constitute a custodial arrest." *Livingston v. State*, 317 Md. 408, 412, 564 A.2d 414 (1989) (citing *Colorado v. Bannister*, 449 U.S. 1, 3, 101 S.Ct. 42, 66 L.Ed.2d 1 (1980)). In the instant case, the speeding and seat belt violations constituted a valid reason for stopping the vehicle in which appellant was a passenger, and the stop shall not be "rendered invalid by the fact that it was 'a mere pretext for a narcotics search.'" *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (quoting *United States v. Robinson*, 414 U.S. 218, 221, n. 1, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973)).

Our inquiry, similar to that in *Doering v. State*, 313 Md. 384, 545 A.2d 1281 (1988), is whether Officer Snyder, after making a legal traffic stop and conducting a legal search of the vehicle, had probable cause to believe that a felony had been committed and that appellant had been involved in the commission of that felony. *Doering*, 313 Md. at 403, 545 A.2d 1281. Clearly, upon finding the cocaine, Officer Snyder had probable cause to believe a felony had been committed, specifically, possession of a controlled dangerous substance. The present question is whether Officer Snyder had probable cause to believe appellant, at the time of the arrest, was in possession of the controlled dangerous substance.

"The rule of probable cause is a non-technical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion." *Id.*; *see also Collins v. State*, 322 Md. 675, 680, 589 A.2d 479 (1991); *Sterling v. State*, 248 Md. 240, 245, 235 A.2d 711 (1967); *Edwardsen v. State*, 243 Md. 131, 136, 220 A.2d 547 (1966). The United States Supreme Court explained this nontechnical conception in *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949):

> Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating ... often opposing interests.

> Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

See Doering, 313 Md. at 403, 545 A.2d 1281.

In the instant case, during the hearing on appellant's motion to suppress, defense counsel argued that there was no basis upon which to infer appellant had knowledge of the drugs. The following exchange occurred.

> The Court: Well, I think one reason they may know they are there is because he placed them there. Within an arm's reach. That's a reasonable assumption.
>
> [Defense Counsel]: Again, your Honor, ...
>
> The Court: I am thinking only on the fact that they were in arm's reach in the way he was seated. Especially when they were not secreted. They were just basically placed back there and hidden by the armrest. That was the information that [the officer] had before he made the arrest.
>
> [Defense Counsel]: I would argue, Your Honor, that the drugs are secreted under those circumstances. [The officer] can't see them. The armrest is certainly placed up there for some purpose.
>
> The Court: To hide them.
>
> [Defense counsel]: To hide them.
>
> The Court: From the police.
>
> [Defense counsel]: Exactly.
>
> The Court: Well, he didn't do a very good job. He didn't have much time.

The trial court concluded:

> Upon the search drugs were found within an arm's reach of [Pringle], not in a secretive place or in a locked place. As well as put the armrest back up [sic]. The other factor that was not argued is the fact that there was money in front which you have money in front, drugs in the back, both in arm's reach of this particular Defendant, I think the officer had probable cause to make the arrest as he did.

The trial court did not cite authority for its "arm's reach" standard, but we presume it was derived from the application of the *Folk* test to contraband found within automobiles. The *Folk* test, announced by this Court in *Folk v. State*, 11 Md.App. 508, 275 A.2d 184 (1971), consists of four factors. The factors are:

> 1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.

Folk, 11 Md.App. at 518, 275 A.2d 184. *See also Moye v. State*, 139 Md.App. 538, 549-50, 776 A.2d 120 (2001); *West v. State*, 137 Md.App. 314, 357-58, 768 A.2d 150 (2001); *Herbert v. State*, 136 Md.App. 458, 465-66, 766 A.2d 190 (2001); *Veney v. State*, 130 Md.App. 135, 143-44, 744 A.2d 1094 (2000); *In Re Nahif A.*, 123 Md.App. 193, 209, 717 A.2d 393 (1998); *Hall v. State*, 119 Md.App. 377, 394, 705 A.2d 50 (1998); *Colin v. State*, 101 Md.App. 395, 406, 646 A.2d 1095 (1994).

The *Folk* test is a useful tool for determining whether someone exercises actual or constructive dominion or

control over contraband, but it is not a bright line rule that permits law enforcement officials and trial courts to find joint possession if the facts of a case satisfy any one of the four factors. *Folk*, like the instant case, was an automobile case, and, when this Court discussed the "proximity" factor in *Folk*, we stated:

> In the case at bar, the proximity between the appellant and the marihuana could not be closer, short of direct proof that the appellant herself was in exclusive physical possession of the marihuana. *She was one of six occupants in a Valiant automobile and was, therefore, whatever her position in the car, literally within arm's length of every other occupant of that automobile.* The marihuana cigarette being smoked was, at any point in time, within direct physical possession of one of those occupants. Proximity could not be more clearly established.

Folk, 11 Md.App. at 518, 275 A.2d 184 (emphasis added).

The *Folk* test was again applied in *Colin v. State*, 101 Md.App. 395, 646 A.2d 1095 (1994), in which this Court said:

> As a passenger, it may be true that Colin did not exercise "control" over the vehicle. Colin was traveling in the same vehicle as the cocaine, however, and that is sufficient to establish "close proximity." Although the cocaine was not in plain view, being secreted away in the door, this factor is also not determinative.... Moreover, as Colin was a voluntary passenger, it may be reasonably inferred that he anticipated "the mutual enjoyment of the contraband." Further, from his riding in the vehicle with appellant Heath, it could be reasonably inferred that they wanted to use the drug jointly.

Colin, 101 Md.App. at 407, 646 A.2d 1095 (citations omitted).

In *Colin*, we examined all four *Folk* factors and found the "proximity" and "mutual enjoyment" factors were satisfied. *Id.* *Colin* was followed a year later in *Pugh v. State*, 103 Md.App. 624, 652-53, 654 A.2d 888 (1995), a case in which cocaine was found inside the spare tire under the carpeting of the trunk. *Folk*, *Colin*, and *Pugh* were all cases in which this Court was tasked to review the sufficiency of the evidence to sustain a possession conviction.

Appellant relies on *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), in which the Court dealt with the issue of probable cause. In *Livingston*, the Court held that "the presence of two seeds on the floor in the front of the car, without more, [was] insufficient to inculpate [Wesley Warren] Livingston, a rear seat passenger, for possession of marijuana." *Livingston*, 317 Md. at 413, 564 A.2d 414.

Livingston is distinguishable from the case before us. In *Livingston*, there were two marijuana seeds on the front floorboard and the defendant was in the back seat. In the case before us, there were five baggies behind an armrest in the back seat and a substantial amount of cash in the glove compartment located in front of appellant. We see a significant difference between two marijuana seeds and five baggies plus cash. The circumstances were sufficient to constitute probable cause to make an arrest.

Inducements

The introduction of a criminal defendant's confession is permitted at trial if the confession was, "(1) voluntary under Maryland nonconstitutional law, (2) voluntary under

the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*." *Hoey v. State*, 311 Md. 473, 480, 536 A.2d 622 (1988). To overcome a pretrial motion to suppress, the State must establish by a preponderance of the evidence that the confession was freely and voluntarily given, and not a product of improper threats, inducements, or promises. *Winder v. State*, 362 Md. 275, 307, 765 A.2d 97 (2001). "Maryland law demands that confessions 'be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary.'" *Reynolds v. State*, 327 Md. 494, 504, 610 A.2d 782 (1992) (quoting *Hillard v. State*, 286 Md. 145, 150, 406 A.2d 415 (1979)).

In the case *sub judice*, appellant relies on nonconstitutional grounds for challenging the voluntariness of his confession. Appellant contends he confessed because of promises by Officer Snyder to release the other occupants of the vehicle. Appellant argues Officer Snyder's statement to the suspects at the arrest scene, that unless he knew who possessed the drugs, "you are all going to get arrested," induced appellant's subsequent confession. Appellant testified at the suppression hearing that Officer Snyder reissued a similar inducement during the police station interrogation. Officer Snyder testified the alleged incident at the police station never occurred, however. The circuit court denied appellant's motion to suppress, finding that the confession was voluntary.

In general, we review the totality of the circumstances surrounding the confession to determine voluntariness.

Reynolds, 327 Md. at 495, 610 A.2d 782. Relying on *Hillard v. State*, 286 Md. 145, 406 A.2d 415 (1979), the Court established a two-part test whereby a confession is deemed involuntary and inadmissible, if "(1) a police officer or an agent of the police force promises or implies to a suspect that he or she will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and (2) the suspect makes a confession in apparent reliance on the police officer's statement." *Winder*, 362 Md. at 309, 765 A.2d 97. In the instant case, neither prong is satisfied.

Under the first prong, we apply an objective test to determine whether Officer Snyder's statement was a threat, promise, or inducement. "Although a defendant need not point to an express *quid pro quo*, '[a] mere exhortation to tell the truth is not enough to make a statement involuntary.'" *Winder*, 362 Md. at 311, 765 A.2d 97 (quoting *Reynolds*, 327 Md. at 507, 610 A.2d 782). There is a distinction between a permissible exhortation, "much better if you told the story," *Ball v. State*, 347 Md. 156, 174, 699 A.2d 1170 (1997); general recommendation that suspect seek advice, *Reynolds*, 327 Md. at 509, 610 A.2d 782; "get it off your chest," *Bean v. State*, 234 Md. 432, 442, 199 A.2d 773 (1964); "better if [you] told the truth," *Ralph v. State*, 226 Md. 480, 486, 174 A.2d 163 (1961); "the truth hurts no one," *Merchant v. State*, 217 Md. 61, 68, 141 A.2d 487 (1958); "the truth would hurt no one," *Deems v. State*, 127 Md. 624, 630, 96 A. 878 (1916); "I want you to tell me the truth," *Nicholson v. State*, 38 Md. 140, 153 (1873); "no sense in lying," *Clark v. State*, 48 Md.App. 637, 646, 429 A.2d 287 (1981), and an impermissible promise or offer; "produce

the narcotics, [and your] wife would not be arrested," *Stokes v. State*, 289 Md. 155, 157, 423 A.2d 552 (1980); "if you are telling me the truth ... I will go to bat for you," *Hillard*, 286 Md. at 147, 406 A.2d 415; "it would be better for him to tell the truth, and have no more trouble about it,"*Biscoe v. State*, 67 Md. 6, 6, 8 A. 571 (1887). Consistent among the later category, prior to the confession, the suspect is promised something as a consequence of his or her response or silence. In contrast, Officer Snyder's statement communicated that all three suspects were going to be arrested for possession. This statement flowed naturally from the attendant circumstances of finding three suspects within the proximity of the illegal drugs. Officer Snyder subsequently arrested the three suspects, consistent with the import of his statement. Officer Snyder denied telling the three suspects that "if one person is going to be the one who fesses [sic] up tell me now so I can let the other two go." Instead, Officer Snyder sought the truth, stated his intent to arrest the suspects, and carried out the arrests. Absent an express promise, threat, or inducement, we shall not consider the defendant's subjective belief that he or she would benefit by confessing. *Winder*, 362 Md. at 311, 765 A.2d 97. Consequently, we reject appellant's argument that he believed the other suspects would be released from custody if he confessed.

Assuming *arguendo* that Officer Snyder promised to confer a benefit upon appellant if he confessed, we still affirm the outcome because the second prong necessarily fails. Under the second prong, we determine whether there was a nexus between Officer Snyder's statement and appellant's confession by examining the particular facts and circumstances surrounding the confession. *See id.* at

312, 765 A.2d 97. We must "ascertain whether he [appellant] had been influenced by such inducement in making the confession." *Ralph v. State*, 226 Md. 480, 486, 174 A.2d 163 (1961). We shall consider the amount of time elapsed between the alleged inducement and the confession, and any intervening factors, besides the statement, that might have caused the confession. *See Winder*, 362 Md. at 312-13, 765 A.2d 97.

Officer Snyder made the alleged inducement to appellant sometime shortly after 3:16 a.m., however, appellant did not make the confession until 5:30 a.m. At least two hours elapsed generating an issue of attenuation. While no bright line test exists for delineating a proper time frame, in *Ralph*, the court held that an alleged inducement made eight hours before the confession was too attenuated, while in *Stokes*, the court held a confession made in direct response to an inducement was sufficiently related. *Ralph*, 226 Md. at 486, 174 A.2d 163; *Stokes*, 289 Md. at 157-58, 423 A.2d 552. During the passage of two hours, appellant's lack of urgency in responding to Officer Snyder's statement diminishes the alleged impact. The timing factor alone would not dispose of the issue; consequently, we address the intervening considerations.

Appellant's argument that he confessed so his friends would go free is inconsistent with the sequence of events. All three suspects, including appellant, were arrested at the scene prior to their transfer to the police station and appellant's confession. Our focus is only on the alleged inducement at the scene because the trial court rejected appellant's claim of a subsequent inducement at the police station. The alleged inducement at the scene consists of a single statement, "you are all going to get arrested." Appellant's argument fails because he and his friends had

already been arrested when he later made the oral and written confession. Appellant's transfer from the crime scene to the police station also disrupted the nexus between the alleged inducement and confession. Thus, following the arrest, no benefit could be conferred and any influence from Officer Snyder's statement had seriously dissipated.

Although we reach our decision on different grounds, it is unsettled whether a promise to benefit a friend justifies finding the subsequent confession involuntary. The Court in *Stokes*, refused to consider whether kinship or what degree of closeness is required between the defendant and third party. *Stokes*, 289 Md. at 160 n. 2, 423 A.2d 552 (finding that a promise to benefit
defendant's wife was an inducement). In *Finke*, however, the Court found no degree of closeness, stating that "the record contains nothing to indicate that appellant actually enjoys a particularly close relationship with the child, and the nature of their kinship does not imply such a closeness." *Finke v. State*, 56 Md.App. 450, 485, 468 A.2d 353 (1983) (defendant and the third party were first cousins). *Cf. Bellamy v. State*, 50 Md.App. 65, 77-78, 435 A.2d 821 (1981) (defendant's confession induced by promise to benefit fiancee was found involuntary); *Jarrell v. State*, 36 Md.App. 371, 373 A.2d 975 (1977)(consenting to search based on promise to release sick friend was found involuntary). We need not decide this issue.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Dissenting opinion by SONNER, Judge.

I concur with the bottom line holding on Pringle's first issue. Although I believe the admission of the testimony was wrong, the error was not preserved. I must respectfully, but emphatically, dissent on the second issue. The majority, in finding that Officer Snyder had probable cause to arrest Pringle, and in affirming this conviction, has promulgated dangerous precedent that ignores developed law and guides law enforcement to act against the grain of due process and ethical police procedures.

First, as to the dissent: When Officer Snyder discovered contraband secreted in the back seat armrest of the car in which Pringle was riding, he was in doubt as to whom the drugs belonged and whom he could arrest. He did not conclude that the drugs belonged jointly to all three passengers, including the driver of the car, the back seat passenger, and Pringle, who sat in the front passenger seat. Reacting to his doubt, the officer threatened to arrest all three men, unless one of them admitted ownership of the forbidden drugs. When no one did so, Officer Snyder, with his doubt still unresolved, arrested all three. Now, the majority sanctions such police work, concluding that Officer Snyder had probable cause to arrest all three men to squeeze a confession of ownership from one of them. I am unable to go along with what I believe is not only a stretch to affirm a conviction, but an analysis that ignores a clear line of cases from the Court of Appeals spanning three decades.

Professors Charles Whitebread and Ronald Stevens wrote, in 1972, that constructive possession of narcotics prosecutions "have engendered such conceptual confusion and given rise to so many conflicting rulings 'that for the practitioner the problems are difficult to understand and apparently for the courts impossible to master.'" Charles

H. Whitebread & Ronald Stevens, *Constructive Possession in Narcotics Cases: To have and Have Not*, 58 Va. L.Rev. 751 (1972) (quoting *United States v. Holland*, 445 F.2d 701, 704 n. 1 (D.C.Cir.1971) (Tamm, J., concurring)). This Court has compounded the confusion, at times, by diverging from the precedent developed by the Court of Appeals in joint possession cases, which can lead "to contrary conclusions in cases with similar facts." *See* Dana L. Weinstein, *The Maryland Survey: 1996- 1997: Recent Decisions: The Maryland Court of Appeals*, 57 Md. L.Rev. 795, 813 (1998). With the majority opinion, I believe, this Court again fails to heed and follow controlling law from the Court of Appeals.

In 1971, in *Folk v. State*, 11 Md.App. 508, 275 A.2d 184, Judge Moylan reviewed Maryland's previous joint possession cases and articulated a four-part test that reflected the "common thread" running through those cases. One of the enumerated factors was the proximity between the accused and the contraband. *See id.* at 518, 275 A.2d 184.[1] This Court affirmed Lillie Mae Folk's conviction because there was sufficient evidence to convict all six occupants of the car for possession of

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[1] The other enumerated factors were whether (1) "the contraband was within the view or otherwise within the knowledge of the defendant;" (2) the defendant exercised ownership or some other kind of possessory interest in the location where the drugs were found; and (3) whether the circumstances indicated that "the defendant was participating with others in the mutual use and enjoyment of the contraband." *Folk*, 11 Md.App. at 518, 275 A.2d 184.

marijuana. The discovered drugs were "within arm's length" of all of the passengers, satisfying the proximity factor. *Id.* But the evidence did not stop with mere proximity, as Judge Moylan explained:

> Nor would there be, under the circumstances of this case, any difficulty in drawing a reasonable inference that the marihuana was within the view, or otherwise within the knowledge, of the appellant. In a darkened car in a dark field, the glow from a lighted cigarette is clearly visible within that maximum radius of four to five feet between the glow and the viewer. Knowledge of the presence of marihuana would be imparted even more emphatically by the sense of smell, in a situation where the cloud of smoke and the peculiar pungent odor filled the interior of a tightly-closed automobile. Neither would the inference be unreasonable that some conversation transpired among the six persons huddled there in the dark dealing with what the cigarette and the fumes were all about. It would, indeed, be unreasonable not to infer knowledge of the marihuana on the part of the appellant.

Id. This Court has returned to the four-part test articulated in *Folk* several times. *See, e.g., Pugh v. State*, 103 Md.App. 624, 654 A.2d 888 (1995); *Colin v. State*, 101 Md.App. 395, 646 A.2d 1095 (1994); and the six other cases cited in the majority opinion on page 797.

Three years after *Folk*, however, in *Garrison v. State*, 272 Md. 123, 321 A.2d 767, (1974), the Court of Appeals overturned a conviction involving joint possession, after we had affirmed it in an unreported opinion. Judge O'Donnell, writing for a unanimous Court, conducted his own extensive review of Maryland joint possession cases.

Without discussing *Folk* or applying any four-part test, Judge O'Donnell stated that the proper determination was whether the accused exercised some "dominion or control," either jointly or solely, over the contraband. *Id.* at 142, 321 A.2d 767. The Court then concluded that the evidence was insufficient to show that Shirley Garrison jointly possessed the heroin seized from the apartment that she shared with her husband. Since *Garrison*, the Court of Appeals has consistently ignored the *Folk* four-part test, so often applied by this Court, and,
instead, has preserved Judge O'Donnell's approach of asking whether the accused exercised some dominion or control over the contraband.[2]

The next significant Court of Appeals ruling on joint possession was *State v. Leach*, 296 Md. 591, 463 A.2d 872 (1983), in which the accused occupied an apartment with his brother and had been observed by police going in and out of the building several times. A search of the apartment produced evidence of a commercial narcotics operation, including two scales, cutting tools, and

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[2] Courts in other jurisdictions also have focused on the accused's dominion or control of the contraband, and have rejected proximity as a conclusive factor in joint possession cases. *See, e.g., United States v. Blue*, 957 F.2d 106 (4th Cir.1992) ("The mere proximity of [contraband] [ ] to a passenger in a car goes only to its accessibility, not to the dominion or control which must be proved to establish possession."); *Reid v. State*, 212 Ga.App. 787, 442 S.E.2d 852 (1994); *State v. Drake*, 288 Ill.App.3d 963, 225 Ill.Dec. 552, 683 N.E.2d 1215 (1997); *State v. Toups*, 792 So.2d 18 (La.Ct.App.2001).

individually wrapped packets of PCP. In spite of a strong dissent by Chief Judge Robert Murphy, the majority found insufficient evidence that Leach had exercised "actual or constructive dominion or control" over the illegal drugs, even though it was clear that he had some proprietary interest in the apartment and some of the incriminating evidence turned up in his bedroom. *Id.* at 595, 463 A.2d 872. Neither Judge Rodowsky, writing for the six-judge majority, nor Judge Murphy, in dissent, mentioned the *Folk* test.

Next, in *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988), the Court of Appeals meaningfully expanded the *Garrison* analysis when it held that criminal possession included the element of knowledge. It clarified that, along with showing dominion or control, "[t]he accused, in order to be found guilty, must know of both the presence and the general character or illicit nature" of the item possessed. *Id.* at 651, 547 A.2d 1041. The Court reversed Leonard Dawkins's conviction, even though police observed him enter an apartment carrying a tote bag, in which, twenty minutes later, they found narcotics paraphernalia and heroin residue. Judge Eldridge, writing for a unanimous Court, never mentioned the *Folk* four-part test, which presumably Dawkins satisfied by carrying the tote bag.

In three important cases since *Dawkins*, the Court of Appeals has ignored the *Folk* test. In *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), a state trooper, who stopped a vehicle for speeding, was found to have lacked probable cause to arrest a back seat passenger for possession of two marijuana seeds discovered on the front floor of the car. The Court wrote, in reversing the conviction and finding a lack of probable cause: "Merely sitting in the backseat of the vehicle, Livingston did not

demonstrate to the officer that he possessed any knowledge of, and hence, any restraining or directing influence over two marijuana seeds located on the floor in the front of the car." *Id.* at 415-16, 564 A.2d 414. Judge Blackwell, writing for a unanimous Court, cited *Garrison*, *Leach*, and *Dawkins* for their discussion of what it means to knowingly exercise dominion and control.[3]

In *Taylor v. State*, 346 Md. 452, 697 A.2d 462 (1997), the Court of Appeals reversed this Court's unreported opinion sustaining a possession conviction, in which we found that "appellant's presence in a room where marijuana had recently been smoked l[ed] to the inference that appellant had himself smoked marijuana." *Id.* at 457, 697 A.2d 462. Judge Raker, writing for a unanimous Court, cited *Garrison* and *Leach* to explain possession. The Court clarified:

> Possession requires more than being in the presence of other persons having possession; it requires the exercise of dominion or control over the thing allegedly possessed. Without more, [Richard Taylor's] presence in the room where marijuana had recently been smoked does not support a rational inference that [he] had possessed marijuana. Furthermore, the existence of smoke in a room

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[3] The Court applied *Garrison* and *Leach*, which questioned the sufficiency of the evidence, to *Livingston*, which questioned the existence of probable cause to arrest, thereby conflating the appropriate analysis in both types of cases. Of course, "probable cause requires less evidence than that which is essential to sustain a conviction." *Collins v. State*, 322 Md. 675, 681, 589 A.2d 479 (1991).

> occupied by five people does not alone justify the inference that [Taylor] was engaged in the mutual use or enjoyment of the contraband.

Id. at 459, 697 A.2d 462 (citations omitted). While the Court acknowledged that Taylor's proximity to the concealed contraband created a suspicion of guilt, it stated emphatically that "[m]ere proximity ... is insufficient to support a finding of possession." *Id.* at 460, 697 A.2d 462 (quoting *Murray v. United States*, 403 F.2d 694, 696 (9th Cir.1968)). Once again, the Court did not mention the *Folk* test in reversing the conviction.

In the most recent case of *White v. State*, 363 Md. 150, 767 A.2d 855 (2001), the Court of Appeals, per Judge Harrell, reversed this Court for having sustained a conviction after applying the *Folk* test. Defendant White had challenged the sufficiency of the evidence on his convictions for possession of cocaine and related charges. Recognizing that the Office of the Attorney General had fashioned its argument to demonstrate compliance with the *Folk* test, the Court of Appeals, nevertheless, did not apply *Folk*. It stayed the course set by its precedents and focused on whether White knew about the drugs found in the trunk of his car and whether he exercised control over them. After reviewing the record in a light most favorable to the State, the Court found the evidence insufficient as a matter of law. Although the Court did not reject the *Folk* test outright, referencing *Taylor*, it again denounced proximity as a litmus test for determining possession.

Mindful of *Garrison* and its progeny, I believe the majority has stopped far short of considering whether Pringle, in any way, knowingly exercised dominion or control over the secreted contraband, and has resorted instead to "speculation or conjecture." *Taylor*, 346 Md. at

459, 697 A.2d 462. Although Pringle, like Folk, may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver around the back of his seat, and pull down the arm rest. And unlike Folk, Pringle was not sitting in a closed car that emanated the pungent, easily detectable smell of marijuana, which were critical facts in Judge Moylan's analysis sustaining Folk's conviction thirty years ago. Although the majority attaches some significance to the large roll of currency found in the glove compartment, located in front of Pringle's seat, cash, in and of itself, is innocuous and certainly less suspicious than the scales and cutting tools discounted by the Court of Appeals in *Leach*. Further, there was no showing whatsoever that Pringle, as a passenger in the car, had any connection to, or knowledge of, the money found within the glove compartment of someone else's car. *See White*, 363 Md. at 167, 767 A.2d 855.

While the majority recognizes that *Folk* does not provide "a bright line rule that permits law enforcement officials and trial courts to find joint possession if the facts of a case satisfy any one of the four factors," it proceeds to sustain the conviction based only on the "proximity" factor enumerated in *Folk* and to conclude that, because the secreted cocaine was within arm's reach, as the marijuana was in *Folk*, that Pringle was in joint possession. To be sure, the *Folk* test may be useful in organizing the evidence presented in a joint possession case, and it may assist in reaching the conclusion that a particular person did in fact exercise some dominion or control over a prohibited drug. The majority, however, wrongly treats the individual *Folk* factors as litmus tests, in place of the more balanced and more delicate jurisprudence developed

by the Court of Appeals in the last three decades.

Next, I would find that the confession, which resulted from an illegal arrest, should be barred as the fruit of a poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). For the majority, of course, there is no tree to purify, and no fruit to be plucked.

Even were the arrest legal and in compliance with the Fourth Amendment, I would bar the admission of the confession because it was improperly induced. The majority, in its discussion of the fundamental law governing the admission of confessions, has it right: confessions are permitted at trial if they conform with the Maryland Declaration of Rights, Maryland non-constitutional law, and the voluntariness requirement of the Due Process Clause of the *U.S. Constitution*. Further, the confession must conform with *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and those cases interpreting it. I depart from the majority's opinion, however, that the confession here was voluntary. The admitted threat by the police to arrest all the occupants of the car unless someone confessed was "a coercive barnacle [ ] that ... prevent[ed] the [subsequent] expression from being voluntary." *Hillard v. State*, 286 Md. 145, 150, 406 A.2d 415 (1979). The spoken threat, although perhaps not as serious as a threat to arrest a near relative as in *Stokes v. State*, 289 Md. 155, 161, 423 A.2d 552 (1980), was from a due process point of view, equally impermissible.

At common law, courts excluded only confessions that were unreliable. See Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 Harv. C.R.-C.L.L.Rev. 105, 111-12

(1997). Constitutional due process, as we understand it today, rejects confessions that are untrustworthy and confessions that may be trustworthy, but, nonetheless, are involuntary. *See id.* at 112-13. The tactic of threatening third persons to obtain a confession is likely to produce unreliable and involuntary statements, which are more the product of fear and anxiety than truthful disclosure. Our holding sanctions law enforcement officials to choose from a group, however large, some volunteer to take the fall for friends or relatives. Confessions so induced would lack the reliability that due process and our developed law commendably demands. Indeed, the majority holding thwarts the wisdom and sensitivity carefully nurtured in our law of criminal procedure.

On the remaining issue, I concur that the so-called expert testimony did not warrant reversal, not because its admission was proper, but because Pringle did not preserve the error of its admission. The prosecutor asked Detective Massoni for an opinion about whether the drugs, which had been separately packaged, were intended to be distributed. The detective, as a qualified expert, could express an opinion as to whether they were or not, and the court properly overruled the defense's objection to that question. But Detective Massoni went further in his answer and said that the drugs were to be distributed "either to regain money or to be used for sex," a conclusion based not upon his expertise, but wholly grounded in the confession that Officer Snyder had extracted from Pringle. The detective asserted, in effect, that he believed Pringle's confession was accurate, an opinion that is barred by *Bohnert v. State*, 312 Md. 266, 278, 539 A.2d 657 (1988) (holding that "[t]estimony from a witness relating to the credibility of another witness is to

be rejected as a matter of law.").

The answer was flawed for an additional reason. The detective, by commenting about Pringle's intent, violated Maryland Rule 5-704(b), which prohibits an expert from giving an opinion about a defendant's mental state, when that is an element of the crime charged. The Court of Appeals, in *Hartless v. State*, 327 Md. 558, 611 A.2d 581 (1992), likewise condemned such expert testimony. The majority holds that, because the detective testified about how the drugs were intended to be used, he did not testify explicitly about Pringle's state of mind. Such a distinction is unconvincing, however, because the detective specifically referenced the particular intent expressed in Pringle's confession, not the intent he, as an expert, drew from the packaging of the drugs. So, the answer was doubly inadmissible. Detective Massoni essentially declared: "Pringle told Officer Snyder that his intent was to exchange the drugs for money or sex, and I believe him!" The detective's expertise did not permit him to garner such a conclusion. He also may have intended to disparage Pringle in the minds of the jurors, which the evocative statement likely accomplished.

Nevertheless, Pringle did not move to strike the detective's objectionable answer. Maryland Rule 4-323 clearly requires contemporary objections to perceived errors so that trial courts can attempt to correct them as they arise. *See Hall v. State*, 119 Md.App. 377, 389, 705 A.2d 50 (1998). Consequently, I would affirm on this issue, but not in a way, as the majority has, that condones what the prosecutor and expert police witness did in this case.

APPENDIX C

THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND

vs.

JOSEPH PRINGLE

Case Number: 99-CR-3578

* * * * * * * * * * * * *

REPORTER'S OFFICIAL
TRANSCRIPT OF PROCEEDINGS
Motions Hearing

Towson, Maryland
March 23, 2000

BEFORE: THE HONORABLE ALEXANDER WRIGHT, JR., Associate Judge

APPEARANCES:

On Behalf of the State:
DANIEL BERNARD TRIMBLE, ASSISTANT STATE'S ATTORNEY

On Behalf of the Defendant:
DONALD ZAREMBA, ASSISTANT PUBLIC DEFENDER

Reported By:
Kathleen A. Papesh

* * * *

THE COURT: Thank you. Very well. the Court has listened to the testimony in this particular case. The Court does feel that the officer acted properly. That the officer did not violate any of the Defendant's constitutional rights. There was a consent search of the vehicle. Upon the search drugs were found within an arm's reach of the Defendant, not in a secretive place or in a locked place. As well as put the armrest back up. The other factor that was not argued is the fact that there was money in front which you have money in front, drugs in the back, both in arm's reach of this particular Defendant, I think the officer had probable cause to make the arrest as he did. He took them to the Garrison Precinct. I don't believe that there were any unconstitutional threats made to him. He gave him his Miranda rights. He asked him if he wanted to make a statement, which he did. The Court does not find any unconstitutional infirmities as well.

Motion denied.

MR. ZAREMBA: Thank you.

THE COURT: Thank you very much.

* * * *

(WHEREUPON, the Court adjourned.)

ORIGINAL

(3)

Supreme Court, U.S.
FILED
FEB 14 2003
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND, *

Petitioner *

v. * No. 02-809

JOSEPH JERMAINE PRINGLE, *

Respondent *

* * * * * * * * * * * *

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent, Joseph Jermaine Pringle, who is indigent and who has been found to meet the qualifications for representation by the Office of the Public Defender for the State of Maryland, asks leave to proceed in *forma pauperis* pursuant to Rule 39.

Respondent's affidavit in support of this motion is attached.

Respectfully submitted,

Sherrie B. Glasser
Assistant Public Defender
Office of the Public Defender
Appellate Division
6 St. Paul Street, Suite 1302
Baltimore, MD 21202
(410) 767-8522

Counsel for Respondent

OFFICE OF THE CLERK
SUPREME COURT

B pp

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND *
Petitioner

*

v. **No. 02-809**

*

JOSEPH JERMAINE PRINGLE
Respondent

* * * * *

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN *FORMA PAUPERIS*

I, Joseph Jermaine Pringle, being duly sworn, depose and say that I am the respondent in the above-entitled case. I swear or affirm under the penalty of perjury that, because of my poverty, I cannot pay the costs of this appeal. I further swear or affirm under the penalty of perjury that my answers to this form are true and correct.

Joseph Pringle Date: 1/30/03
Joseph Jermaine Pringle

1. Are you presently employed?

NO

(a) If the answer is *yes*, state the amount of your salary or wages per month and give the name and address of your employer.

(b) If the answer is *no*, state the date of your last employment and the amount of the salary and wages per month which you received.

NOVEMBER 1999 - $370.00 A WEEK

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment or in the form of rent payments, interest, dividends, or other source?

NO

(a) If the answer is *yes*, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings accounts?

NO

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

NO

(a) If the answer is *yes*, describe the property and state its approximate value.

5. List the persons who are dependent on you for support and state your relationship to those persons.

NO ONE

6. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months? If yes, describe.

HOPING TO BECOME EMPLOYED

7. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? If yes, how much?

NO

8. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? If yes, how much?

NO

9. State your address of legal residence.

2718 GILES RD BALTIMORE MD 21225

Your daytime phone number: 410-633-6131

Your age 28 Your years of schooling: GED

Your social security number: 216-84-4572

No. 02-809

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2002

STATE OF MARYLAND,

Petitioner

v.

JOSEPH JERMAINE PRINGLE,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 02-809

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2002

STATE OF MARYLAND,

Petitioner

v.

JOSEPH JERMAINE PRINGLE,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

Review is unwarranted because the opinion of the Court of Appeals of Maryland correctly applies this Court's decision in *United States v. Di Re*, 332 U.S. 581 (1948). Resolution of this case requires nothing more than the application of settled law to a set of facts unique to this particular case. Moreover,

contrary to Petitioner's claim, there is no conflict in the rulings of the federal and state courts as to the application of *Di Re* in cases involving the arrest of passengers.

STATEMENT OF THE CASE

Mr. Pringle was charged with the offense of possession with intent to distribute cocaine. Prior to trial he contested the legality of his arrest.

At the hearing on the Motion to Suppress held on March 23, 2000, Officer Jeffrey Snyder testified that at 3:16 a.m. on the morning of August 7, 1999, he was on routine patrol in the Reisterstown/Garrison area of Baltimore County when he conducted a traffic stop of a Nissan Maxima traveling at a high rate of speed. (Pet. App. at 2a-3a, 50a). The driver was not wearing a seat belt. The driver/registered owner was ascertained to be Donte Partlow. (Pet. App. at 3a). Respondent, Joseph Pringle, was seated in the front passenger seat and Otis Smith was seated in the rear of the vehicle. (Pet. App. at 3a). Officer Snyder noticed that when Mr. Partlow opened the glove compartment to obtain his registration, there was "a large amount of money rolled up." (Pet. App. at 3a). Officer Snyder secured Mr. Partlow's license and registration. (Pet. App. at 3a). After running a computer check, he found no outstanding violations. Mr. Partlow, who was standing outside his vehicle, was issued a verbal warning. At this time, a second police car arrived and parked directly behind Officer Snyder's car. Officer Snyder then inquired whether Mr. Partlow had any drugs or weapons in the vehicle. The

latter responded in the negative. Officer Snyder then sought, and received, permission to search Mr. Partlow's car. (Pet. App. at 3a). The two passengers were asked to exit the vehicle, patted down for weapons, and asked to be seated on the curb. (Pet. App. at 3a). The search of the vehicle revealed $763 in the glove compartment and five plastic glassine baggies containing suspected cocaine from behind an armrest in the back seat of the vehicle. Describing the location of the cocaine, the Maryland Court of Appeals noted the following:

> The armrest in the backseat was the type that goes up and down. At the time of the stop, the armrest was in the upright position and flat against the seat. When Officer Snyder pulled down the armrest he found the drugs, which had been placed between the armrest and the back seat of the car and, absent the pulling down of the armrest, were not visible. (Pet. App. at 3a-4a, fn.2).

Officer Snyder questioned each of the three men individually as to the ownership of the drugs and money. (Pet. App. at 3a-4a). He advised them that if no one admitted to ownership of the drugs, he was going to arrest them all. When the men denied knowledge of the items, they were placed under arrest and transported to the precinct. (Pet. App. at 4a).

Officer Snyder subsequently met with Mr. Pringle sometime between 4:00-4:45 a.m. (Pet. App. at 4a). Following a waiver of his Miranda rights Mr. Pringle provided an oral and written statement in which he acknowledged that the cocaine belonged to him, that he and his friends were on their way to a party in Westminster, and that he intended to sell it or "use it for sex." He maintained that

neither Mr. Partlow nor Mr. Smith knew of the drugs. (Pet. App. at 4a). Mr. Partlow and Mr. Smith were released. (Pet. App. at 4a).

Defense counsel argued that respondent's arrest was unlawful because it was not supported by probable cause, and that, as such, his statement should be suppressed as the unlawful fruit of such arrest. (Pet. App. at 4a-5a). The trial judge found that the police "had probable cause to make the arrest as he did." (Pet. App. at 5a).

On appeal, the Court of Appeals of Maryland held "that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." (Pet. App. at 22a). Accordingly, the Court of Appeals concluded that inasmuch as there was no probable cause to arrest respondent, under the "fruit of the poisonous tree doctrine," *See Mapp v. Ohio*, 367 U.S. 643 (1961), the evidence seized could not be used against him. (Pet. App. at 23a).

REASONS FOR DENYING THE WRIT

The State maintains that the case of *Wyoming v. Houghton*, 526 U.S. 295, 297 (1999) has changed the approach by the appellate courts established in *United States v. Di Re*, 332 U.S. 581 (1948), and *Ybarra v. Illinois*, 444 U.S. 85 (1979), in evaluating probable cause to arrest. Citing *Houghton*, the State appears to

confuse the right of the police to search the contents of a vehicle and the right to arrest and search the passengers. Specifically, the State asserts that *Houghton* has "been understood as a departure" from the principles of *Di Re* and *Ybarra.* (Pet. at 9). However, in making this assertion, the State fails to cite any authority in support thereof. Indeed, a review of the State's Petition reveals it as "much ado about nothing." As such, denial of the petition is warranted.

In *Di Re*, this Court invalidated the arrest of a defendant found sitting in a car with a man who had knowingly passed counterfeit gasoline ration coupons to an informant also sitting in the car, on the ground that probable cause could not be inferred simply from the defendant's mere presence in the car. It was emphasized that the right to search the vehicle for contraband did not carry with it the concomitant right to search Di Re's person, even though he was an occupant of the car. The Court commented as follows: "We are not convinced that a person, by mere presence in a suspected car loses immunities from search of his person to which he would otherwise be entitled." *Id.*, 332 U.S. at 587.

Ybarra was a case which focused upon the propriety of the search of a patron of a tavern which was searched pursuant to a warrant. In finding that the search of Ybarra was unlawful, this Court held:

> It is true that the police possessed a warrant based on probable cause to search the tavern in which Ybarra happened to be at the time the warrant was executed. But, a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. ... Where the standard is probable cause, a search or seizure of a person must be supported by probable cause with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search another or to search the premises where the person may happen to be. (citation omitted). *Id.*, 444 U.S. at 91.

In contrast, the issue in *Houghton* was whether "police officers violate the Fourth Amendment when they search a passenger's *personal belongings* inside an automobile that they have probable cause to believe contains contraband." *Id.*, 526 U.S. at 297 (emphasis added). That case did not involve the search of the purse's owner. The difference between searching a person, as opposed to a container, is significant. Indeed, in *Houghton* this Court repeatedly emphasized the constitutional distinction between the two searches. *Id.* at 302-03.

In holding that all containers found within an automobile are the proper subject of a search when there is probable cause to believe that the automobile itself contains contraband, this Court in *Houghton* emphasized that it's holding was entirely consistent with *Ybarra* and *Di Re*. The Court, speaking through Justice Scalia, noted that *Ybarra* and *Di Re* "turned on the unique, significantly heightened protection afforded against searches of one's person," *Id.*, at 303, and, citing *Terry v. Ohio,* 392 U.S. 1 (1968), the Court explained why the search of a person, as opposed to an object, is granted this "heightened protection:" " 'Even a limited search of the outer clothing ... constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening,

and perhaps humiliating experience." *Houghton,* 526 U.S. at 303. Thus, because "[s]uch traumatic consequences are not to be expected when police examine an item of personal property found in a car," the Court held that the Wyoming Supreme Court had erred in relying upon *Di Re* and *Ybarra* because those cases involved searches of persons, rather than containers as in *Houghton. Id.* at 303 and n 1. See also *id.* at 308 (Breyer, J., concurring). Hence, it is abundantly clear that the Court in *Houghton* specifically distinguished between the law governing searches of persons as dealt with in *Di Re* and *Ybarra,* and the search of objects, and was not, as urged by the State in its Petition, "a departure from the principles of *Di Re* and *Ybarra.*"

Further, in attempting to create a distinction where none exists, the State seizes upon the language of *Houghton* that a car passenger "will often be engaged in a *common enterprise* with the driver and have the same interest in concealing the fruits or evidence of their wrongdoing." (emphasis added). *Id.* at 304-05. The State thus takes this language, stretches it, contorts it, and attempts to interpret it as a as a novel theory of law. The fact remains that case law continues to consistently follow the requirement that there be *some* link between a mere passenger and contraband lawfully seized from within the vehicle before such passenger can be subject to arrest. Indeed, virtually all of the cases cited by the State, purportedly to demonstrate a relaxation of the requirement of link between the passenger and the contraband, in fact do provide such link. *See i.e, State v.*

Horton, 625 N.W.2d 362 (Iowa), *cert. denied,* 122 S.Ct. 288 (2001) (proximity of passenger to contraband in plain view); *Brunson v. State,* 940 S.W.2d 440, 441 (Ark.), *cert. denied,* 522 U.S. 898 (1997) (odor of marijuana emanating from the vehicle in which the defendant was a passenger); *Jackson v. State,* 643 A.2d 1360, 1365-66 (Del.1994) (contraband in a non-secretive location within the vehicle). The State additionally cites cases, in completely irrelevant contexts, to purportedly establish that the police can arrest more than one person who is suspected of participating in an offense. *See i.e., People v. Sutherland,* 683 P.2d 1192, 1196 (Colo. 1984) (taking of blood from two individuals present in an automobile involved in an accident to ascertain the presence of alcohol in the blood); *State v. Johnson,* 682 So.2d 385, 387 (Ala. 1996) (arrest of two individuals suspected of committing a child-abuse/murder). These, and the remaining cases cited by the State utterly fail to establish any deviation from the basic, fundamental principle that the right to search a vehicle for contraband does not carry with it a concomitant right to arrest a mere passenger in the vehicle absent a link connecting such passenger to the contraband.

In conclusion, it is clear that there has been no deviation by this Court in the principles espoused in *Di Re* and *Ybarra,* nor is there a conflict between those rulings and the decision of the Court of Appeals of Maryland in this case. Inasmuch as the opinion of the Court of Appeals is consistent with this Court's prior decisions, review is not merited.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

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No. 02-809

In The Supreme Court Of The United States

STATE OF MARYLAND,
Petitioner,
v.
JOSEPH JERMAINE PRINGLE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF OHIO AND 19 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Fourth Amendment allows a law enforcement officer to arrest multiple occupants of a car when the officer discovers drugs and a large amount of cash in the passenger compartment of the car, and all of the car's occupants deny ownership of the contraband.

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STATEMENT OF *AMICI* INTEREST

The State of Ohio and 19 other *amici* States write to urge the Court to grant certiorari in this case. The judgment of the court below – holding that "a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger" in the car, Pet. App. at 23a – limits the arrest powers of law enforcement officers in a way that this Court has never endorsed. That ruling conflicts with the approach followed by a number of other state and federal courts in multiple-suspect cases like this one, where all of the potential suspects deny any wrongdoing even though a crime has clearly been committed. By imposing on the government at the time of an arrest the kind of admittedly-higher standard that the government must later meet at trial, the court below has muddled Fourth Amendment law, and has sown confusion in the law enforcement community, which often faces just the kind of situation that the officer in this case did.

Like Maryland, most States have statutes on the books that allow a law enforcement officer to make warrantless arrests whenever the officer has developed probable cause to believe that certain crimes have been committed by a suspect. On a daily basis, officers on the street rely on those statutes – and on the long history of Fourth Amendment jurisprudence that supports them – to make probable cause determinations and to arrest those persons linked to criminal activity. In performing those duties, law enforcement officers in every State look to the courts for clear and consistent guidance on the scope of the term "probable cause" in the Fourth Amendment.

The decision below is just the latest in a growing line of cases that have addressed the application of the Fourth Amendment's probable-cause standard in multiple-suspect

situations, and those cases have not produced a clear answer for police officers who are striving earnestly to protect the rights of innocent bystanders while ensuring that the guilty do not slip away. This case presents a sound vehicle for the Court to resolve that uncertainty.

At stake are three important interests for the States: (1) the ability of the States and their local communities to arrest suspected criminals when probable cause supports those arrests; (2) the interest in helping police officers make sound probable-cause-to-arrest determinations without imposing on them the burden of deciding whether prosecutors will later be able to prove the case at trial; and (3) eliminating the confusion that now exists surrounding officers' arrest powers in multiple-suspect situations like the one in this case.

The *amici* States urge the Court to hear this Fourth Amendment case so that the considerable uncertainty that now marks this area of the law can be resolved.

REASONS FOR GRANTING THE WRIT

The Maryland high court's approach to the probable-cause issue in this case warrants review here for several important reasons. First, this Court has not squarely addressed the question of whether and when probable cause to arrest can be found in multiple-suspect situations, though this Court has of course said that the government's burden in finding probable cause to arrest is not as great as the government's later burden of proving guilt at trial. Second, the judgment below differs in its outcome from the rulings of other state and federal courts, and those conflicting decisions have generated considerable confusion on the issue. Third, police officers routinely face similar situations on a regular basis, and they deserve to know how they ought to resolve them.

I. The Court Should Grant Certiorari To Determine The Probable Cause Standard That Governs Multiple-Suspect Arrests.

While this Court has repeatedly addressed the probable cause standard, it has never directly examined how that standard should be applied in a multiple-suspect scenario like this one. What the Court *has* done is shape the definition of probable cause in cases involving (1) just one suspect, or (2) multiple individuals in factual situations much different from the one presented in this case. Neither of those lines of cases resolves the question that this case raises.

Over fifty years ago, this Court defined probable cause as a commonsense, nontechnical concept that allows law enforcement officers to make determinations based on "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). That definition of probable cause requires only an evaluation that looks to the totality of the circumstances and the "probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983). As the Court has said, "practical people formulate[] certain commonsense conclusions about human behavior," and just as "jurors . . . are permitted to do the same, . . . so are law enforcement officers." *United States v. Cortez*, 449 U.S. 411, 418 (1981).

Many times, the Court has applied that common-sense notion to the issue of probable cause in single-suspect cases. *See, e.g., Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) (a warrantless arrest for a fine-only offense was permissible under the Fourth Amendment); *Florida v. J.L.*, 529 U.S. 266 (2000) (an anonymous tip did not exhibit sufficient indicia of reliability to justify an investigatory

stop); *Florida v. Royer*, 460 U.S. 491 (1983) (police had no probable cause to arrest a nervous young man who paid cash for an airline ticket from Miami to New York under an assumed name).

In contrast, the Court's cases involving *multiple* suspects have often focused on the validity of *searches*, rather than – as does this case – on the validity of multiple arrests. *See, e.g., Ybarra v. Illinois*, 444 U.S. 85 (1979) (a search warrant for a tavern and its bartender did not permit body searches of the bar's patrons); *United States v. Di Re*, 332 U.S. 581 (1948) (probable cause to search a car did not justify a body search of a passenger). As the Court has said only recently, "[t]hese cases turned on the unique, significantly heightened protection afforded against searches of one's person." *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999).

To be sure, in *Di Re* the Court rejected the government's argument that Di Re could be arrested simply because he was present in a car in which the driver alone had just committed an illegal transaction with an undercover informant. But the Court's conclusion that "Di Re's mere presence" near the transaction was insufficient to justify his arrest, 332 U.S. at 594, does not resolve the situation in this case, where *someone* in the car no doubt possessed the illegal drugs and the cash that the officer found, and yet the officer's initial investigation did not link that contraband to any particular occupant of the car. The officer in this case did not try to search a seemingly innocent bystander, nor arrest one suspect after seeing another passenger commit the crime. Instead, the officer sensibly concluded that he had probable cause to arrest all of the occupants in the car, once all three of them denied any knowledge about the contraband that the officer had legally discovered.

A well-known treatise writer offers this common-sense approach to a scenario not far afield from the one in this case:

> A sees B and C bending over a dead man, D. B and C each accuse the other of murdering D. A is not sure that either B or C did the killing, but he has a reasonable suspicion that either B or C killed D. A is privileged to arrest either or both.

2 W. LaFave, Search and Seizure, §3.2(e), p. 64 (3d ed. 1996) (quoting Restatement (Second) of Torts § 119, comment i (1965)). LaFave further notes that because an arrest also serves "an investigative function, . . . '[t]he quantum of evidence necessary to *sustain* an arrest is not, in all circumstances, the same quantum necessary to make out probable cause for charging a person with the crime.'" *Id.* at 66 (emphasis added) (quoting *Goldsmith v. United States*, 277 F.2d 335, 343 (D.C. Cir. 1960) (Burger, J.)).

That latter point is one that this Court has echoed, for as the Court has said, there is a "large difference" between what is required to show probable cause and what is required to prove guilt in a criminal case. *Brinegar*, 338 U.S. at 173. There is also a significant difference between the respective roles of the law enforcement and legal entities that determine each of those questions. *Id.* The Court recognized in *Brinegar* that requiring arresting officers to first gather evidence sufficient for a conviction would effectively hamstring law enforcement efforts and harm the public interest. As the Court has said, "[t]he validity of the arrest does not depend on whether the suspect actually committed a crime," and "the kinds and degree of proof and the procedural requirements necessary for a conviction are not prerequisites to a valid arrest." *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979).

Probable cause – not sufficiency of the evidence for a conviction – ought to guide the officer in the field when he decides whether or not to arrest a suspect, and as the three dissenters in the court below said, "[w]hether the State's Attorney can produce sufficient evidence to demonstrate, beyond a reasonable doubt, actual or constructive dominion or control over the narcotics . . . to warrant a conviction is another question." Pet. App. at 41a. That statement by the dissenters below echoes this Court's own words in *Adams v. Williams*, 407 U.S. 143, 149 (1972) ("[p]robable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction").

Whether the court below rightly or wrongly examined the probable cause issue through a lens focused on the State's ability to prove its case at trial, the fact remains that this Court's precedents do not resolve the question that Maryland has raised. While all agree that probable cause is the standard, how that standard should be applied in a multiple-suspect case like this one is unclear. What we do know is that a crime had been committed in a lawfully-stopped car, and none of the three occupants of the car claimed ownership of the drugs and the cash. While the evidence at the time might not have been sufficient to convince a trier of fact that any particular occupant of the car was the owner of the contraband, the officer's decision to arrest all three occupants of the car seems consistent with the maxim that "[p]robable cause exists where the facts and circumstances . . . are sufficient in themselves" to suggest that "an offense has been or is being committed." *Draper v. United States*, 358 U.S. 307, 313 (1959) (quotations and brackets omitted). The judgment below finding otherwise warrants review now.

II. The Ruling Of The Court Below Runs Counter To The Approach Followed By Other Courts In Similar Multiple-Suspect Cases.

Courts around the country have resolved the question in this case in different ways. A number have relied on this Court's decision in *United States v. Di Re*, 332 U.S. 581, 592 (1948) (where "only [one] person" had "committed a possible misdemeanor in the open presence of the officer," and "the officer had no such information as to Di Re," the arrest of Di Re himself violated the Fourth Amendment). Cases in which courts have applied that holding include *People v. Foster*, 788 P.2d 825, 829 (Colo. 1990) (where a car's driver claimed ownership of a stolen motorcycle that was hitched to the car, the police lacked probable cause for an arrest of the car's passenger); *Rogers v. State*, 586 So.2d 1148, 1151-52 (Fla. App. 1991) (an informant's tip about the drug-running activities of the driver of a van gave police officers probable cause to arrest that driver, but the officers lacked any probable cause to arrest the van's passenger); *State v. Jacobs*, 704 S.W.2d 300, 301-02 (Mo. App. 1986) (the arrest of a car's inebriated driver was proper, but the police officer had no probable cause to arrest and search a back seat passenger who was sipping a soft drink).

In each of those cases, as in *Di Re*, officers had articulable and reasonable grounds for arresting particular suspects, but the officers had no reasonable basis for arresting others who were seemingly just along for the ride.

That line of cases does not easily lend itself to resolving this particular case, however, where, as the dissenters below explained, the arresting officer "could [have] reasonably believe[d]" that the three occupants of the car "were exercising joint and constructive possession of the contraband in the vehicle, were engaging in drug trafficking,

or were conspiring to engage in drug trafficking, thus establishing probable cause for the arrest of each individual." Pet. App. at 41a.

A number of state courts have resolved multiple-suspect cases in the way that the dissenters below urged in this case. *See, e.g., People v. Vermouth*, 98 Cal. Rptr. 65, 71 (Cal. App. 1971) (an officer properly arrested a car's driver and passenger where the circumstances suggested that both were in possession of weapons and cash found in the vehicle); *People v. Sutherland*, 683 P.2d 1192, 1196 (Colo. 1984) (officers had probable cause to arrest and obtain blood samples from both occupants of a vehicle involved in an accident when both occupants accused each other of being the driver); *State v. Jordan*, 605 P.2d 646, 652 (Ore. 1980) (the arrest of more than one person was appropriate where the occupants of a house would not identify who among them was the suspect listed on an arrest warrant), *cert. denied*, 449 U.S. 846 (1980); *Commonwealth v. Chase*, 575 A.2d 574, 578 (Pa. Super. Ct. 1990) (officers may properly arrest two suspects where there is probable cause to believe that either of them committed the criminal offense), *appeal denied*, 590 A.2d 295 (Pa. 1990); *State v. Mitchell*, 482 N.W.2d 364, 368-69 (Wisc. 1992) (an officer had probable cause to arrest both occupants of a vehicle in which the officer detected the presence of marijuana odor and smoke).

Representative of this line of cases is the recent ruling in *State v. Horton*, 625 N.W.2d 362 (Iowa 2001), *cert. denied*, 534 U.S. 928 (2001). In that case, the state supreme court found that police officers could have reasonably believed that either occupant of a vehicle was in possession of marijuana, and so the officers had probable cause to arrest either occupant. The issue was not, the court explained, whether there was sufficient evidence to support a conviction or an indictment of either suspect. 625 N.W.2d at 365. Instead, according to the court, the officers on the scene had

properly focused on whether reason and common sense suggested that each of the suspects had committed a crime. The facts and circumstances did so suggest, and the arrest of both was proper, the court concluded. 625 N.W.2d at 367.

Tension likewise exists between the judgment below and the approach followed by some federal circuit courts. *See, e.g., Fernandez v. Perez*, 937 F.2d 368, 370 (7th Cir. 1991) (an officer had probable cause to arrest the three occupants of a vehicle after finding a single handgun loaded with metal-piercing bullets in the trunk of the car); *id.* ("[o]bviously, absent an explanation to the contrary, the bullets were the property of one, two or all three of the occupants of the car"); *Bettis v. United States*, 408 F.2d 563, 567 (9th Cir. 1969) (a person's status as an occupant of a car, his help with unloading the car, and his suspicious gaze at officers "might be sufficient as a basis for making an arrest of him at the scene as a probable party" involved in a drug transaction, even though those same facts would not be sufficient to convict him of the crime). As this Court has said, a car passenger "will often be engaged in a common enterprise with the driver, and will often have the same interest in concealing the fruits or the evidence of their wrongdoing." *Wyoming v. Houghton*, 526 U.S. at 304-05.

As Maryland's petition explains in greater detail, courts around the country have wrestled often with the dilemma presented by multiple-suspect cases like this one. The kind of situation resolved by this Court decades ago in *Di Re* – where all evidence pointed toward one suspect and not the other – is an easy one for lower courts to settle today. Much tougher – and much more likely to lead to differing outcomes in different States – are the situations like the one in this case, where a crime was clearly committed, but the evidence at the scene did not directly implicate or exonerate any of several possible suspects. The continuing uncertainty on the question, coupled with the seemingly improper focus

in the court below on the government's inability to prove all elements of the crime at the time of the arrest, points toward the need for guidance from this Court now on the question that Maryland has raised.

III. Police Officers Need Guidance On The Question Presented.

Law enforcement officers frequently encounter the kind of multiple-suspect scenario that the court below examined. Where an officer's on-the-spot investigation shows that a crime has been committed, where all potential suspects deny any wrongdoing, and where the facts and circumstances point toward the possibility that all (or at least more than one) of the suspects has participated in the crime, what may the officer do next? That question is critically important to law enforcement officers in every State, and the uncertainty generated by conflicting court decisions does not make the officers' already-difficult job any easier.

As this Court has said, a "single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979). We readily acknowledge that each Fourth Amendment case will always necessarily turn on its own facts, and no simple formula can ever resolve all of the uncertainty that surrounds probable-cause-to-arrest questions in the close cases. Yet the frequency of problem that the officer in this case faced, the importance of the question for those who may innocently or otherwise find themselves in situations like the one that gave rise to this litigation, and the earnest desire of the States and their law enforcement officers to bring greater clarity to an area of the law now muddied by

a patchwork of differing court rulings across the country prompt us to join Maryland in urging the Court to hear this case now.

CONCLUSION

For the foregoing reasons, the *amici* States urge the Court to grant Maryland's petition.

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STATE OF MARYLAND,
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JOSEPH JERMAINE PRINGLE,
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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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PETITION FOR CERTIORARI FILED NOVEMBER 22, 2002
CERTIORARI GRANTED MARCH 24, 2003

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The following opinions have been omitted in printing this joint appendix because they appear in the appendix to the Petition for Writ of Certiorari, on the following pages:

Reported opinion of the Court of Appeals
of Maryland, filed August 27, 2002,
Joseph Jermaine Pringle v. State of Maryland,
370 Md. 525, 805 A.2d 1016 (2002) 1a-49a

Reported opinion of the Court of Special Appeals
of Maryland, filed November 28, 2001,
Joseph Jermaine Pringle v. State of Maryland,
141 Md. App. 292, 785 A.2d 790 (2001) 50a-77a

RELEVANT DOCKET ENTRIES

October 6, 1999 — Two-count criminal information filed, charging possession with intent to distribute cocaine and possession of cocaine.

November 22, 1999 — Defendant's motions pursuant to Maryland Rule 4-252, including motion to suppress, filed.

March 23, 2000 — Defendant's motion to suppress heard and denied.

April 10, 2000 — Jury trial commenced.

April 11, 2000 — Jury returned guilty verdicts on both counts of information.

May 9, 2000 — Defendant sentenced to 10 years on Count 1; Count 2 merged with Count 1 for sentencing.

May 15, 2000 — Defendant's notice of appeal filed.

November 28, 2001 — Reported Opinion of Court of Special Appeals of Maryland affirming judgment below.

August 27, 2002 — Reported Opinion of Court of Appeals of Maryland reversing judgments below.

[1] THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND

vs.

JOSEPH PRINGLE

Case Number: 99-CR-3578

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REPORTER'S OFFICIAL
TRANSCRIPT OF PROCEEDINGS
Motions Hearing

Towson, Maryland
March 23, 2000

BEFORE: THE HONORABLE ALEXANDER WRIGHT, JR.,
Associate Judge
APPEARANCES:
On Behalf of the State:
DANIEL BERNARD TRIMBLE,
ASSISTANT STATE'S ATTORNEY
On Behalf of the Defendant:
DONALD ZAREMBA,
ASSISTANT PUBLIC DEFENDER
Reported By:
Kathleen A. Papesh

[2] * * * * * *

MR. TRIMBLE: Calling State versus Joseph Pringle. Daniel Bernard Trimble on behalf of the State. This is set in for motions this afternoon.

MR. ZAREMBA: For the record, Donald Zaremba. My client is present with me. Before we start, I would like to make a preliminary motion to sequester the State's witnesses and then I will set forth the grounds for the motions.

THE COURT: Have the officer step outside. Please do not discuss your testimony with anyone.

MR. ZAREMBA: Thank you.

Your Honor, I am moving in this case to suppress evidence --

THE COURT: Mr. Pringle, you may be seated.

MR. ZAREMBA: I would like to set forth the grounds to support my motion to suppress. I am moving to suppress a statement that was allegedly given by my client, Joseph Pringle, to Officer Snyder of the Baltimore County Police Department on August 7, 1999. I am also moving to suppress any evidence that was seized from my client at the time of his arrest by the Baltimore County Police Department on August 7, 1999. I am moving to suppress both items of evidence on the grounds that they were taken -- they are as a result of an illegal search and seizure of my client in violation of the fourth and fourteenth amendments of the [3] Constitution of the United States. I am also alleging, Your Honor, that the evidence should be suppressed because the statements that were given in this case are involuntary under Maryland Common Law, under Article 2 of the Declaration of Rights and the fourth

and fourteenth Amendments of the Constitution and also that the statements were not taken in compliance with the dictates of the Miranda decision.

Thank you.

MR. TRIMBLE: Your Honor, with regard to the statement, we will just have Officer Snyder. With regard to any evidence actually [seized] from the person, there is none. Evidence was seized from a car which the Defendant was a passenger in. The State is not waiving standing on the Defendant's behalf in that regard. So other than that, I will just have Officer Snyder come in and testify.

THE COURT: Very well.

A witness called to testify on behalf of the State was duly sworn and testified as follows:

THE CLERK: Please state your full name and current duty assignment for the record.

WITNESS: Officer Jeffrey Snyder. I work out of the Garrison precinct, Precinct Three.

MR. TRIMBLE: Officer Snyder, I am going to direct your attention to August 7, 1999. Were you working in the Garrison Precinct at that time?

[4] A Yes.

Q Directing your attention to approximately 3:16 a.m., were you on duty at that time?

A Yes.

Q Were you in a marked vehicle and in uniform at that time?

A Yes.

Q What, if anything, unusual did you observe at that time, Officer?

A I observed -- let me refer to my notes to the exact type of vehicle. I observed a silver 1987 Nissan Maxima bearing Maryland registration FPC331 traveling on High Falcon Road at a high right of speed with the driver not wearing a seat belt.

Q Now, were there any other occupants in the vehicle?

A Besides the driver, two.

Q Did you effectuate a traffic stop?

A Yes.

Q What was the reason for the traffic stop?

A For driving at a high rate of speed in a posted 25 mile an hour zone and the driver was not wearing a seat belt.

Q Did you identify the driver?

A Yes, by his driver's license.

[5] Q What was his name?

A Donte Carol Parlo.

Q Were you able to identify the passengers of the

vehicle?

A Yes.

Q Who was -- well, where were they seated?

A Front right seat, passenger's seat was the Defendant, Mr. Pringle.

Q And who was in the back seat?

A Otis Smith I believe.

Q Did you issue a citation to the driver of the vehicle?

A No, I did not.

Q What did you do in that regard?

A I gave him a verbal warning.

Q Where was he in terms of inside the vehicle or outside the vehicle when you gave him the verbal warning?

A He was outside the vehicle.

Q And when you had stopped the vehicle and asked the driver to get out, what, if anything, did you ask the two passengers to do?

A Well, --

Q Did you ask them to do anything?

A When I asked the driver to get out of the vehicle?

[6] Q Yes.

A I didn't ask them to do anything.

Q Having stopped the vehicle, were you the only officer in your car?

A When I stopped the vehicle, yes.

Q Did any other officers arrive on the scene?

A Subsequently another officer arrived shortly thereafter.

Q And was that before or after you issued the verbal warning to Mr. Parlo?

A After I initiated the verbal warning.

Q And where exactly was the area of the stop?

A It was on high Falcon Road just east of Route 140.

Q What kind of street is High Falcon? Is it industrial, residential?

A A residential street.

Q Does it have sidewalks?

A Yes, it does.

Q Street lights?

A Yes.

Q When you pulled over Mr. Parlo's car, was it pulled to the side of the road or on the shoulder?

A Off to the right-hand side of the road.

Q Where did you park your vehicle? In front or **[7]** behind?

A Directly behind.

Q And the other police vehicle that arrived on the scene, where was it parked?

A Directly behind my vehicle.

Q So, it was Parlo's car, your car and then behind you was the other officer?

A Yes.

Q Okay. I take it -- well, when you asked for Mr. Parlo's driver's license, did you run that information through the MVA?

A Yes, I did.

Q And during that time, where was Mr. Parlo?

A Mr. Parlo?

Q Yes.

A He was in his vehicle.

Q Where was the Defendant and the other passengers?

A They were in their respective spots in the vehicle.

Q After receiving whatever information you got back from the MVA, I take it you responded back to the vehicle?

A Yes, I did.

Q Did you have any -- did you have Mr. Parlo's **[8]** license or registration with you?

A When I went back to the vehicle?

Q Yes.

A Yes, I did. I had a driver's license and I believe his registration with me.

Q Did you return it to Mr. Parlo?

A Yes, I did once I had him outside the vehicle.

Q Did you ever take the information, the actual physical documents, from either the Defendant or the other passengers?

A I don't recall whether I took their identification. I might have taken it to identify them. I don't recall whether I did or not.

Q Do you recall whether you held onto any of their identification?

A Not that I recall, no.

Q Had you retained their identification, would that be something out of the ordinary course for you to do?

A If I had any reason to hold them, I might hang onto their identification, but otherwise, no.

Q So, after identifying them, you typically would return the identification material to the person?

A Sure.

Q After issuing the verbal warning, what, if anything, else did you ask of Mr. Parlo?

[9] A After returning his identification?

Q Yes.

A I asked him if he had anything in the vehicle, any drugs, weapons, narcotics in the vehicle.

Q What did he say?

A He said no.

Q What did you ask him after that?

A I asked him if he would mind that I search his vehicle.

Q What did he say?

A He said yes, go ahead.

Q And was he standing outside the vehicle at that time?

A Yes.

Q What did you do in regard to the two passengers, the

Defendant and the back seat passenger, Mr. Smith?

A I asked them to exit the vehicle.

Q Did they, in fact, exit the vehicle?

A Yes, they did.

Q Where did they go, sir?

A I asked them to take a seat over on the sidewalk.

Q Was that where Mr. Parlo was?

A Yes.

Q Did they all three sit down?

[10] A Yes.

Q Where was the other officer at that time?

A Standing between the two vehicles.

Q Did you subsequently conduct a search at that time?

A Yes, I did.

Q And what part of the car did you search first?

A The front of the vehicle, the front driver's side.

Q And did you discover anything in that area?

A No, I did not.

Q How long did it take you to search that area?

A Maybe thirty seconds.

Q And did you search the rear area? That is, the rear seat area of the vehicle?

A Yes, I did.

Q When was that?

A After I searched the front right passenger's seat area, that's when I found the money in the glove box.

Q When you found the money in the glove-box, was that in regard to when you searched the front area of the vehicle? Was that before or after?

A Well, when I went up to -- actually when I was at the vehicle the first time and I was talking to the driver and asking for his registration, that's when I saw the money **[11]** in the glove box. I knew money was already in there. At that point when I was searching the vehicle, I took the money out of the glove box and put [it] in the front seat. I then went to search the back seat and that's when I found the crack cocaine.

Q How long did it take you to find that item?

A You mean the entire search?

Q Well, from when you started searching the back seat.

A Maybe ten seconds, fifteen seconds.

Q And how long did it take you to complete your whole search?

A Maybe three minutes.

Q When you said you found crack cocaine, I take it you did not just find it laying all by itself. Was it packaged separately?

A Yes, it was. I believe it was five glassine baggies. I would have to read my probable cause here. It revealed a clear plastic Ziploc baggie containing five smaller glassine baggies containing a white rock-like substance underneath the armrest.

Q What did you do with the three individuals after that discovery?

A At that point I talked to them. I interviewed Mr. Parlo there. I spoke to him.

[12] Q What did he tell you, if anything?

A He really wouldn't tell me anything.

Q Okay. What did you do after speaking with Mr. Parlo?

A I had him stand to one side of the wall.

Q What happened after that?

A I spoke to the Defendant, Mr. Pringle, and the other subject, Mr. Smith.

Q And this was on the side of the road?

A Yes.

Q And after speaking to them, what, if anything, did

you do?

A They didn't devulge any information as to who the drugs or the money belonged to. At that point all three were arrested and transported back to our precinct.

Q Prior to getting back to the precinct, let me ask you a few more questions. When you informed Mr. Parlo that you were giving him a verbal warning in regard to the seat belt violation and speeding, do you recall what it is you said to him?

A I believe I said to him based on your record after I ran his driving record, his record was not that bad. I explained to him this was a residential area and I was giving him a break inspite of the fact that he was speeding. I believe that was all I said.

[13] Q And he was outside of his vehicle at that time?

A Yes.

Q Where was he standing?

A Between my vehicle and his vehicle.

Q Do you recall saying anything to either passenger in regard to the warning that you gave to Mr. Parlo?

A No, I do not.

Q Did you say anything at all to Mr. Pringle or Mr. Smith after asking them to step out of the car so you could search it?

A Other than having them step out of the car, I believe

I patted each one down for weapons. Other than that, no.

Q Now, once you got back to the precinct, Officer, what did you do specifically in regard to the Defendant, Mr. Pringle?

A I read his rights per Miranda.

Q And where was that?

A Well, --

Q Do you recall which room it was?

A In the interview room.

Q Can you describe that.

A It is basically a four by four desk, two chairs. On the wall is a Miranda rights card. That's about it.

Q Does the room have one door, two doors, windows?

[14] A It has one door.

Q Does it have any windows?

A No, it does not.

Q How is it lit?

A As lit as it is here.

Q Were those lights on at that time?

A Yes, they were.

Q Do you recall what time of day it was when you spoke to him?

A Approximately 4:35, 5:00 in the morning. Maybe 4:00. I stopped him at 3:16. Maybe forty-five minutes after that. Maybe 4:00.

Q You indicated that you said the Miranda rights were on the wall. What do you mean the Miranda rights were on the wall? Was it painted on?

A No, in our precinct they are taped to the walled.

Q What would be those rights, if you recall?

A The Miranda rights. You have the right to remain silent. Anything you say can be used against you in a court of law.

Q Did you read that verbatim?

A Yes, I did.

Q Court's indulgence.

THE COURT: Yes.

[15] MR. TRIMBLE: Officer, I am going to show you a document and ask you is this the same kind of card that they have taped to the wall in the interview room of Precinct Three?

A Pretty much. The only difference is the one in the precinct they have lines for you to initial. Other than that, this is identical.

Q Can you tell us what the rights were that you read to

the Defendant that day.

MR. ZAREMBA: Your Honor, I would object at this point. If the Officer can remember what was on the sign, that's one thing. For him to just read a card that Mr. Trimble has placed before him I think is objectionable.

THE COURT: Well, he has testified that it was similar. He can ask him to read it and ask him is there anything different from it. So, I will allow it.

MR. TRIMBLE: Officer, if you could read just the five numbered sections. Then tell us if there is anything different.

A You have the absolute right to remain silent. Anything you say can and will be used against you in a court of law. You have a right to talk to a lawyer at any time during any questioning. If you want a lawyer and cannot afford one, you may request the Court to appoint a lawyer prior to any questioning. If you agree to answer questions, **[16]** you may stop at any time and no further questions will be asked. It is identical to the one I read him.

Q Thank you. Did the Defendant appear to have any difficulty understanding the rights that you were reading to him?

A No.

Q Did you ask him if he understood English?

A Yes, I did.

Q And did he say he did?

A Yes.

Q When you talked, did you actually speak in English?

A Yes.

Q Did he appear to have any difficulty understanding any concepts of the Miranda rights as you read them to him?

A No.

Q When you spoke -- strike that. After reading those rights, did you ask him if he had any questions?

A Yes, I did.

Q Did he have any questions about the rights that you had just read to him?

A No, he did not.

Q Did he ask for or did he make an election in regard to remaining silent?

[17] A I am sorry?

Q Did he say one way or the other whether he wished to remain silent?

A No, he did not.

Q Did he ask for a lawyer?

A No, he did not.

Q Did he tell you that he was willing to answer your questions?

A Yes, he did.

Q Did you ask him to give a statement?

A Yes, I did.

Q Did you ask him to give an oral statement or a written statement?

A He gave me both.

Q In the oral portion of the statement, what, if anything, did you ask him?

A I asked him where exactly all three of them were going that night. How did the drugs get in the back seat. Who did they belong to. Whose money was it I found in the glove box.

Q What did he tell you in regard to the place that they were going?

A I believe he said he was going to Westminster with his friends for a party.

Q When you asked him who the drugs belonged to, [18] who did he say?

A He said they belonged to himself.

Q And when you asked him who the money belonged to, what did he say?

A Himself.

Q After asking those series of questions, did you ask

him to give a written statement?

A Yes, I did.

Q If I could have this marked. Officer, I am going to show you what was marked for the motions hearing for identification only at this point as State's Exhibit Number One. It is a two page document. Can you review that document and tell me if you recognize it.

A Yes, I do.

Q And what is that document, sir?

A It is the statement that Mr. Pringle gave me.

Q Now, is this an original of the statement or is this a photocopy?

A It is a copy.

Q Now, the statement or the form that it is written on, is that a Baltimore County form?

A Yes.

Q And what is the title of that form?

A Baltimore County Police Department Witness Statement form.

[19] Q And does it have a form number that the Baltimore County Police Department assigned it?

A Form 14A.

Q Now, is there a new version of the 14A form?

A I believe so, yes.

Q At the top of the form there is a block section with a number of indicators for location, name, CC number and things of that nature. Below that there is a series of ruled lines. In the top section, does this have a complaint number that you would be able to refer to?

A Yes.

Q And is that the same complaint number as in this case?

A Yes, it is.

Q And in regard to the location and name of person on the form, do those all relate to the Defendant in this case?

A Yes, it does.

Q And who filled all of that information out?

A I believe I did.

Q Does it give a full name for the Defendant?

A Yes, it does.

Q What is that?

A Joseph Jermane Pringle.

Q Does it give an age?

[20] A Age twenty-four.

Q And a date of birth?

A November 16, 1974.

Q And an address?

A 1717 West Madison Avenue, Apartment 203.

Q And phone number?

A 383-0395.

Q The rest of the information was in your [i]dentification number and assignment?

A Yes.

Q Below that there is in the ruled lined area there begins on the front page a section that appears to be just a narrative written out, not a question and answer. It is one paragraph. Who wrote that?

A The Defendant Pringle.

Q And below that there is what looks like a question and answer section. One sentence starting with a Q and below would be with an A and then the next sentence after that a Q. Is that a question and answer section that you did with the Defendant?

A Yes, it is.

Q Who wrote the question portion?

A I did.

Q Who wrote the answer portion?

A The Defendant Pringle.

[21] Q On page two of this document, again, you have the information identifying information at the top of the form. Does that correspond with the information on the first page?

A Yes, it does.

Q And the ruled lined area, is that a continuation of the question and answer portion that you held with the Defendant?

A Yes.

Q At the bottom of each page, Officer, there is a line that is marked signature. Whose signature is that?

A The Defendant, Joseph Pringle.

Q And below that there is a line marked witness. Whose signature is in that line?

A My signature.

Q Next to the signatu[r]e line there is a date and next to that a time. Can you read those for the Court, please.

A Date is August 7, 1999.

Q And the next page, is that information exactly the same?

A Yes.

Q Now, at the bottom below all of that on the first page there is a page one of two and on the second page a page two of two. Is there any other page that would be **[22]** missing from this document?

A No.

Q Do you recall in your review of this document any changes in any way, shape or form since the time you completed your interview session with the Defendant?

A No.

MR. TRIMBLE: Your Honor, I would offer this as State's Exhibit Number One.

THE COURT: Admitted subject to the Defendant's motion.

MR. ZAREMBA: Thank you.

MR. TRIMBLE: Officer, if you could, could you read the paragraph portion to the Judge.

A "On August 6, 1999, at 8:00 p.m., I met with an Otis Smith and then I called Donte Parlo so we could meet him at Millford Station to go to a party in Westminster, to meet up with some girlfriends of his. On our way there before we -- it looks like -- exited the car, I asked Donte Parlo to put my money into his glove box. After putting money in the glove box, I put a bag of crack cocaine in the arm rest of his back seat."

Q Now, in that paragraph portion, there appears to be an edited section that is scratched out and then written above it to attend. Who did the editing?

A The Defendant.

[23] Q Now, in the first question, can you read that for the Court, please.

A "Did Otis Smith or Donte Parlo know or have anything to do with the crack or money."

Q And what was the answer?

A "No."

Q And who wrote the answer?

A The Defendant Pringle.

Q Now, it appears that it is written in two separate places. Did he write in two separate places?

A Yes, he did.

Q Now, the next question, please.

A "Where did you get the money."

Q And the answer?

A "I got the money from work."

Q On the second page, Officer, if you could continue with the question.

A "Question, where did you get the cocaine."

Q And the answer?

A "They owed me money, so I took from them as payment of what they owed me."

Q Now, in that answer portion there appears to be some editing. That is, some questions or words that were scratched out. Who did the scratching out?

A The Defendant Pringle.

[24] Q Now, the next question, Officer.

A "What were you planning to do with the cocaine."

Q And the answer?

A "I was going to get r[i]d of it any way I could as payment."

Q And the next question after that?

A "What do you mean by get rid of it."

Q And the answer?

A "Use it for sex or to sell it."

Q And the next question after that?

A "Were your rights advised to you before signing this statement."

Q And the answer?

A "Yes."

Q The question were your rights read to you, what

rights were you referring to?

A The Miranda rights.

Q Did you indicate any other rights to the Defendant that could have confused him with regard to your questioning as to which rights were advised of him?

A No.

Q How was his demeanor during the interview?

A Calm.

Q And how was his attention to you? Did he seem to be paying attention to you or not paying attention to you?

[25] A No, he was very attentive.

Q Did he ask for any kind of food or drink during the interview up to and including the time of the interview?

A No, he didn't.

Q Did he indicate to you whether he needed to use the bathroom or to smoke a cigarette?

A No.

Q Did he fall asleep at any time?

A No, he did not.

Q Did he appear to be under the influence of any drugs or alcohol beverages up to and including the portion of the interview?

A No.

Q Okay.

A Not that I was aware of.

Q Did you make any physical threats to the Defendant at any time whether at the scene or back at the precinct up to and including the interview?

A No.

Q Did you make him any promises in regard to what you may or may not do to him or do in regard to this case or the cocaine that was found or the money that was found?

A No.

Q Did the Defendant make any requests of you in regard to the cocaine or the money or anything else?

[26] A No.

Q While you had him in the interview room -- strike that. After you arrested him, I imagine you placed him in handcuffs at some point?

A Yes.

Q When you responded to the precinct and took him into the precinct for processing, was that before or after the interview?

A I am sorry?

Q When you processed the Defendant, was it before or after the interview?

A What do you mean process?

Q After you got him out of your car and took him back to the precinct, what did you do?

A I completed a 166 arrest form.

Q And after that, when did you do the interview?

A I had to process all three of them. So, after I processed them, then at that point I interviewed them.

Q Okay. When you were in the interview room with the Defendant, was anybody else in there with you?

A No.

Q Were any of the co-defendants in there with you?

A No.

Q Did you mention anything what the co-defendants may or may not have said to you?

[27] A No, I did not.

Q When you were in the interview room, was the Defendant handcuffed or shackled in any way?

A I believe -- usually as a routine we cuff them to a bar in the room. I don't recall at this time whether he was handcuffed at that time. I don't think he was only because I believe he wrote right-handed. In order for him to write right-handed, there is no way to sit in that room while you were cuffed to the wall. I would assume that he was not cuffed at that point.

Q The perpetra[]tor that we have been discussing as the Defendant, do you see him here in the courtroom?

A Yes.

Q Can you point to him. Indicating for the record, Your Honor, the Defendant.

That's all the questions I have for Officer Snyder.

THE COURT: Cross-examination.

MR. ZAREMBA: Officer Snyder, on August 7, 1999, you pulled over this Nissan Maxima at what time in the morning?

A 3:16 in the morning.

Q And you pulled it over because you believe it might be speeding and because the driver was not wearing a seat belt?

A Yes.

[28] Q And you didn't pull it over because you had received any anonymous tips of criminal activity, correct?

A No, I did not.

Q This was merely a traffic stop?

A Yes.

Q When you pulled the car over, the car complied with your activating your police lights?

A Yes.

Q And you approached the driver's side of the vehicle?

A Yes.

Q Did you call for back-up at that point?

A No.

Q Okay. So, you approached the driver's side and you spoke to the driver?

A Yes.

Q Donte Par[lo], correct?

A Yes.

Q And seated in the right front passen[g]er's side of the vehicle was the Defendant, Joseph Pringle?

A Yes.

Q And seated in the back seat of the Nissan Maxima was an individual by the name of Otis Smith?

A Yes.

Q Now, you gave Parlo -- you didn't write him a **[29]** citation, did you?

A Not that I am aware of.

Q You gave him a verbal warning?

A Yes.

Q How long after you pulled that vehicle over did you give him the verbal warning?

A I collected his driver's license and registration and went back to the vehicle.

Q When you say you went back to the vehicle --

A Back to my vehicle.

Q Okay.

A I ran the information over the computer system. At that point I went back up to the vehicle. I asked Mr. Parlo to step out. I spoke to him for a few seconds and gave him his driver's license and registration back after I gave him the warning.

Q So, the question is how long after he was pulled over did you give him a warning?

A Maybe five, seven minutes.

Q Okay. Now, at the time that you gave Mr. Parlo the warning, did you at that point direct Mr. Pringle to exit the vehicle?

A No, I did not.

Q He was still in the vehicle?

A He was still in the vehicle.

[30] Q At the time you gave the warning?

A Yes.

Q Now, did you tell Parlo after you gave him the warning that he was free at that point to drive away?

A No, I didn't tell him he was free. No, I did not say that.

Q So, you continued to question Parlo, correct?

A No.

Q Well, you asked him for consent to search his vehicle?

A Yes.

Q Now, when you approached the vehicle, did you have a flashlight out?

A Yes.

Q You looked inside the vehicle?

A Yes.

Q Shined the light inside the vehicle, right?

A Yes.

Q You didn't see any drugs?

A At that point no.

Q And you didn't see any weapons?

A No.

Q Now, how was Mr. Parlo dressed, do you recall?

A I believe he had on some heavy coat and I believe jeans.

[31] Q Heavy coat in August?

A Maybe it was a sweater. I am not sure. I don't recall what he was wearing.

Q Do you recall what Mr. Pringle was wearing?

A No, I don't.

Q Do you recall what Mr. Smith was wearing?

A No.

Q Okay. Now, when you ordered Mr. Parlo from the car, did you frisk him at that time?

A I believe I did. I asked him if he had any weapons on him.

Q What did he say to you, do you recall?

A He said no. I asked him do you mind if I pat you down and he said sure.

Q So, you patted him down?

A Yes.

Q And after -- then you told him where to stand?

A Yes.

Q Where exactly did you tell him to stand?

A Actually I don't think I told him to stand. He was standing right between the two vehicles.

Q But at some point you told him to sit down at the curb?

A Yes.

Q When was that?

[32] A After I had -- after he gave me consent to search the vehicle, I had him sit on the curb and I asked the other two to get out of the vehicle and sit on the curb.

Q Well, you didn't say you can stay in the vehicle, did you?

A No, I didn't say that.

Q You said to Mr. Pringle get out of the vehicle, right?

A No.

Q Well, --

A I asked them if they would get out of the vehicle.

Q Well, did you say to Mr. Pringle it is your choice. You can stay in the vehicle or you can leave the vehicle, it is up to you?

A No, I didn't say that.

Q Any words to that effect?

A No.

Q So, you told them to get out of the vehicle, right?

A I asked them if they would step out of the vehicle. So, they came out of the vehicle.

Q And you told them where you wanted them located, right?

A I asked them if they would sit on the sidewalk.

[33] Q You told them to sit, right?

A I asked them. I didn't tell them to sit. I asked them if they would sit on the sidewalk.

Q Well, again, you didn't give them the option of standing, did you? You didn't say you can stand wherever you want, right?

A Is there a choice?

Q Well, you didn't communicate this to them, did you?

A I didn't feel I had to.

Q You said sit at the curb, right?

A I didn't feel I had to.

Q Okay.

A I asked them to step out of the vehicle.

Q Well, he steps out of the vehicle, you frisked him,

right?

A I asked them if they had any weapons on them and I asked to pat them down to see if they had any weapons on them.

Q And this was prior to when you told him where you wanted him to remain, right?

A Yes, it was.

Q Okay. You also checked him for identification?

A I believe I did, yes.

Q And you got his driver's license from his pants **[34]** pocket?

A I believe I did.

Q Okay. In which pocket do you recall his license was in?

A No, I do not.

Q Again, you didn't recover any weapons?

A No, I didn't.

Q You didn't recover any drugs from Mr. Pringle?

A No, I did not.

Q So, you reached into his pocket and you removed his driver's license?

A I believe so.

Q You also similarly asked Smith to step from the car, right?

A Yes, I did and he was the sole occupant of the back seat?

A Yes.

Q And you frisked him as well?

A Yes.

Q Patted him down as well?

A Yes.

Q And like the other two, you recovered no weapons, correct?

A That's correct.

Q You uncovered no drugs?

[35] A No, I did not.

Q And, again, you showed Smith where you wanted him to sit, is that right?

A I asked him to sit on the sidewalk.

Q Now, were these three individuals, Parlo, Pringle and Smith, were they told to sit next to each other or told to sit at different locations?

A No, they all sat together on the sidewalk.

Q Okay. Once they were at the sidewalk, again, at no time you didn't tell Mr. Pringle you are free to walk off if you want?

A It is his choice.

Q But you never communicated that to him, did you?

A No, I didn't.

Q And you never communicated it to Mr. Parlo you can walk off, correct?

A No, I did not.

Q And you never communicated it to Mr. Smith that you can walk off, did you?

A No, I didn't. It was their choice.

Q But you never communicated this to them?

A No, I never stated that to them.

Q Okay. Again, did you retrieve[] an identification of some sort from Mr. Smith?

A Yes, I did. I believe I did. I don't recall **[36]** whether I did or not.

Q Where did you retrieve that from?

A I don't know if he gave that to me verbally or he gave me a driver's license. I don't recall.

Q All right. Now, when you searched, then you proceed to search the car?

A No.

Q Correct?

A No.

Q Well, you searched the car when all three individuals were seated at the curb, right?

A That's correct.

Q And you recovered some suspected narcotics?

A Yes.

Q And they were recovered from inside an armrest that was located in the back seat?

A Yes.

Q Did you have -- did you have to lift the armrest to get to those drugs?

A The back rest was up. The seat is flat. The armrest goes up and down. It was in the up position. I pushed it down and the drugs were subsequently there.

Q Okay. So, the back rest was actually in an upright position?

A Yes.

[37] Q And the drugs were actually found sandwiched

between the armrest and the back seat of the car?

A Correct.

Q And you hadn't seen these drugs when you initially approached the car?

A Correct.

Q And you had shined your light inside and the first time you noticed the drugs was when all three individuals were sitting on the curb, correct?

A Correct.

Q This was next to where Otis Smith was sitting?

A The drugs?

Q The drugs.

A Yes.

Q Because he was the only individual you ever saw in the back seat, correct?

A That's correct.

Q Now, the vehicle itself was registered to Mr. Parlo correct?

A Yes.

Q After you recovered the drugs you questioned each individual?

A Yes.

Q Did you question them collectively or one at a time?

[38] A One at a time.

Q And did you ask -- who did you begin with?

A Mr. Parlo.

Q And you testified that Parlo didn't provide you with any information?

A Correct.

Q And the same is true of Mr. Pringle and Mr. Smith?

A Yes.

Q Now, what you did when you conducted the interviews, you told the two individuals to remain seated at the curb while you took the individual that you were questioning away from them, is that correct?

A No.

Q How did you conduct the interview?

A I asked Mr. Parlo if he would step over on the other side of the street with me.

Q And Parlo did?

A Yes.

Q You did the same thing with Pringle?

A Yes.

Q And you questioned him on the other side of the street?

A Yes.

Q Then you did the same thing with Smith, you [39] questioned him on the other side of the street?

A Yes.

Q You were asking each of the individuals whose drugs are these?

A Basically, yes.

Q When you asked that question of Mr. Pringle, you also said if you don't get an answer to the question of whose drugs are these, you are going to arrest all three of them and take them to the precinct?

A Yes.

Q Okay. When you didn't get an answer from all three of them, you arrested all three of them?

A Correct.

Q Now, did you transport Mr. Pringle back to the precinct in your vehicle?

A You know, I don't know. I don't remember who transported him.

Q Some of the individuals went in one car and some

individuals went in another car?

A I believe so.

Q Of course, when you arrested Mr. Pringle, you handcuffed him at that time?

A Yes, he was.

Q And you searched him again?

A Yes, I did.

[40] Q And you didn't find any drugs on him, is that correct?

A Yes.

Q When you took him back to the precinct, the first thing you did was shackle him to a wall in the precinct, right?

A I didn't, but yes, he was.

Q How long was he shackled to the wall?

A I couldn't tell you. As long as it took me to process and took me to interview. I don't know who I interviewed first. I couldn't really tell you. Maybe an hour. Maybe an hour and a half. It depends on how long it takes me to process.

Q Do you recall what time you arrived at the precinct?

A Maybe 4:00, 4:15. Somewhere in there.

Q Before you interviewed Mr. Pringle, you said to him you have one last chance to tell me whose drugs these are or all

three of you will be arrested or words to that effect?

A When? At the precinct?

Q Yeah.

A No, I never said that, not that I recall.

Q Okay. Did you eventually charge Mr. Parlo with the possession of these drugs?

A No, I did not.

[41] Q Okay. Did you eventually charge Mr. Smith with possession of these drugs?

A No, I did not.

Q So, the only person who ends up being arrested for possession of these drugs is Mr. Pringle, correct?

A That's correct.

Q And possession with intent to distribute in this case?

A Yes.

Q So, it was back at the scene of the arrest that you told Mr. Pringle that if you don't tell me whose drugs these are, all three of you are going down?

A Yes.

MR. ZAREMBA: Your Honor, I have no further questions.

THE COURT: State.

MR. TRIMBLE: Officer, I take it then since neither Mr. Parlo nor Mr. Smith were subsequently charged after they were taken back to the precinct that in your interviews with them neither one of them admitted to the ownership or intended distribution of the cocaine?

A That's correct.

Q Now, in the -- strike that. At the time when you spoke to the three individuals at the scene of the traffic stop, had you handcuffed any of them at that time?

[42] A No, I did not.

Q Had you indicated to any of them that they were, and this is after the search, a suspect in regard to the possession of the drugs? Well, let me ask you this, did you advise all three of them that you had found drugs in the car?

A Yes, they were aware.

Q So, they all knew that your questions were going to be pertaining to those drugs, correct?

A Yes.

Q Did any of them fess up and say yes, those are my drugs?

A No, they did not, not totally.

Q And in questioning them, did you tell them that if one person is going to be the one who fesses up tell me now so I can let the other two go?

A No.

Q What was it that you actually said, if you recall?

A I basically said I wanted to know whose these belonged to.

Q And when nobody said that they are mine or that they are his, what did you do?

A I said well, you are all going to get arrested.

Q Did you, in fact, do that?

A Yes, I did.

[43] Q Okay. Now, prior to your coming back out of the car with the bag full of crack in your hand, when you were conducting the search you had asked the three individuals to sit on the curb?

A Yes.

Q Were they all in a general area?

A They all sat right next to each other.

Q And the other officer who was there, was he in uniform?

A Yes, he was.

Q Had you told any of the individuals, Mr. Parlo, Mr. Smith or the Defendant, Mr. Pringle, while they were sitting there as you were conducting this search or getting ready to conduct a search that you suspected them of committing any

type of crime?

A No, I did not.

Q Were you holding onto any of their documentation at that time?

A No, I was not.

Q Did either you or the other officer have any physical contact with those individuals other than your brief pat down for weapons?

A No, we did not.

Q Did either you or the other officer display any threatening behavior in an attempt to keep those individuals [44] where they were?

A No.

MR. TRIMBLE: Those are all the questions I have for Officer Snyder, Your Honor.

MR. ZAREMBA: Your Honor, I have nothing further.

THE COURT: Officer, you may step down.

MR. TRIMBLE: Your Honor, that's the testimony for the State.

THE COURT: Okay. Mr. Zaremba.

MR. ZAREMBA: Stand up, Mr. Pringle. At this point in the hearing you have an option -- Your Honor, I would just ask that the witness step outside.

THE COURT: Very well.

MR. ZAREMBA: Mr. Pringle, you have the option to testify or you have the absolute right to remain silent. If you choose not to testify, Judge Wright would not infer that you were guilty because you chose not to testify. If you testify, you are subject to cross-examination by the State's Attorney like any other witness in this case.

Do you wish to testify in this matter?

DEFENDANT: Yes.

Q Okay. Why don't you take the stand.

At which time the Defendant was duly sworn and testified as follows:

THE CLERK: Please state your full name and [45] current address for the record.

WITNESS: Joseph Jermane Pringle, P R I N G L E. Address is 1717 West Madison Avenue, Baltimore, Maryland, Apartment 203.

MR. ZAREMBA: Mr. Pringle, on August 7, 1999, were you a passenger in a car driven by Donte Parlo?

A Yes, I was.

Q And who else was in the car?

A Otis Smith.

Q How did you know these individuals?

A I grew up with them.

Q They are friends of yours?

A Yes.

Q Close friends?

A Yes.

Q Where were you going?

A We was coming from Westminster going to a girl's house.

Q Now, did there come a time when the car was pulled over?

A Yes.

Q Okay. Was Officer Snyder the individual involved in stopping the vehicle?

A Yes.

Q When the car was pulled over, what, if any, **[46]** direction did Officer Snyder give to you?

A At the time none.

Q Well, what did you hear him say with regard to the driver?

A He asked for license and registration.

Q Okay. Now, did there come a time when the officer

said anything to you?

A After backup arrived.

Q What did Officer Snyder ever say to you?

A He asked me to exit the vehicle.

Q Okay. And did he tell you like where he wanted you to go?

A To sit on the curb.

Q So, his exact words were --

A Would you have a seat on the curb.

Q Now, before he told you to have a seat on the curb, did he conduct any search of you?

A No.

Q Okay.

THE COURT: I didn't hear what you said.

A No.

MR. ZAREMBA: Okay. Did there come a time when he did search you?

A Yes.

Q When was this?

[47] A This was after he told all of us to get out of the

car, then he separated us and questioned us. Then after he found the drugs, he searched us.

Q And how did he search you?

A He patted like dug in our pockets.

Q Okay. Did he go inside your pockets?

A Yes.

Q What did he take out of your pockets?

A My keys and my driver's license.

Q Okay. Now, after Officer Snyder discovered some drugs, what, if anything, did he say to you?

A He told me if he didn't find out whose drugs they was, he was going to lock all three of us up.

Q And what did you say to him?

A I told him I didn't know whose they were.

Q In fact, did you get locked up?

A Yes.

Q Did he arrest you there at the scene?

A Yeah.

Q What did he do with you then?

A He took us to the precinct, had us handcuffed. He

was telling us I am going to give you one last chance to tell me whose drugs these are or I am going to charge all three you all with what I found.

Q Now, where were you when he made this statement **[48]** to you?

A I was handcuffed to like a wall thing with shackles and stuff.

Q And how long had you been handcuffed there?

A Before he said that?

Q Yeah.

A Like probably as soon as we got in there.

Q As soon as you got in there?

A Yeah.

Q Then how long were you handcuffed to the wall before he made that statement to you?

A Like about a half an hour to an hour. Something like that.

Q And did you give a statement?

A Yes.

Q Why did you give a statement?

A Because he said that if we didn't tell him whose drugs they was, he was going to arrest us. I felt threatened.

Q You felt threatened?

A Yes.

Q Did you feel threatened by the fact that you were under arrest?

A Right.

Q How long had you been under arrest at this point?

[49] A Probably two hours.

Q Okay.

A Since he pulled the car over.

Q Now, where were you when you gave a statement?

A When I wrote it?

Q When you wrote it.

A I was in the little room that he had. Right beside where they had all of us contained to the wall.

Q Were you shackled?

A Yes.

Q How were you shackled?

A By the feet and one by the arm.

Q Which arm?

A My right arm.

Q Which arm did you write the statement?

A My left hand. I am left-handed.

Q I mean, why were you covering for your buddies?

A I didn't want them to get in trouble. It is wasn't their's.

Q Okay.

THE COURT: I didn't hear the last statement.

A I said it wasn't their's.

THE COURT: It was not their's?

A Yeah.

MR. ZAREMBA: And as a result did they get **[50]** charged with this?

A No, they didn't.

MR. ZAREMBA: Thank you. Your Honor, I have no further questions.

THE COURT: Mr. Trimble.

MR. TRIMBLE: Mr. Pringle, you did the stand-up thing and took the fall for your own drugs, right?

A Yes.

Q Okay. Now, Officer Snyder had told you at the scene that somebody should say whose they were, right?

A He said if you don't tell me who they was, I am going to lock all three of you up.

Q And he did that?

A Yes.

Q So, when you say he said this again back at the precinct, you were threatened and you felt threatened at that time?

A Yes.

Q Even though you had already been arrested?

A Yes.

Q And you had already been processed and the 166 was already filled out?

A No, it was not filled out.

Q But he completed a 166 form for each one of you three, right?

[51] A Yes. I guess. I don't know what a 166 is.

Q He took all of your information and put it down on a form and gave to another officer?

A I know he did me. I don't remember him doing them at all.

Q Okay. Now, after you were taken inside the Interview room, you were advised of your rights per Miranda, right?

A No.

Q No? Well, you wrote down the statement, correct?

A Right.

Q You don't remember answering the question that you had been read those rights?

A Yes, I remember.

Q Why would you say that then?

A He told me if I didn't write what he said to write, then he would lock all three of us up.

Q And he would lock you up again a third time, is that correct?

A No.

Q Well, you just said that he told you that if you didn't write what he wanted you to write that he was going to lock all of you up.

A Right.

[52] Q Now, this was in the interview room?

A No.

Q I see. Well, you said that you took the fall not because they were your drugs?

A Right.

Q So, everything you wrote in that statement that you had gone up to Westminster, that you were going to look for some girls, all of that stuff was true, right?

A Yes.

Q And it was true that you had taken these drugs from somebody who owed you money?

MR. ZAREMBA: Well, Your Honor, I object as to relevancy at this point.

MR. TRIMBLE: I believe it is very relevant with regard to the truthfulness of these statements.

THE COURT: But the question is voluntariness of the statement.

MR. TRIMBLE: And the truthfulness of those statements goes to their very voluntary nature.

THE COURT: He has already testified that it was his drugs.

MR. TRIMBLE: I understand that, Your Honor. I am getting into the specifics of the statement.

THE COURT: Okay. You have gone far enough.

MR. TRIMBLE: All that information you wrote **[53]** down, Officer Snyder couldn't have dreamed that up, could he?

A No.

Q So, those were actually your words, right?

A It was my words. He like illustrated to me how he wanted me to say it.

Q Okay. Now, Mr. Pringle, let me ask you another question here. Since your eightteenth birthday or in the past fifteen years where you have been represented by an attorney or waived your right to an attorney, have you been convicted of a crime that would go towards your moral turpitude? By that I mean your inherent honesty, a crime such as common law felony or some other crime of dishonesty.

A No.

MR. ZAREMBA: Objection.

THE COURT: Overruled.

MR. TRIMBLE: Mr. Pringle, let me specifically address 1992, April 29 where you were convicted of a first degree sexual offense. Were you convicted of a first degree sexual offense?

MR. ZAREMBA: Objection.

THE COURT: Overruled.

A It was in 1990.

MR. TRIMBLE: I am sorry. Let me next direct you to March 15, 1993. Were you convicted of distribution of drugs?

[54] MR. ZAREMBA: Objection.

A Yes.

THE COURT: Overruled.

MR. TRIMBLE: Those are all the questions I have.

MR. ZAREMBA: I have nothing further.

THE COURT: You may step down.

MR. TRIMBLE: Your Honor, no rebuttal.

THE COURT: Counsel.

MR. ZAREMBA: Your Honor, thank you.

MR. TRIMBLE: Could I have the officer come in and listen to argument?

THE COURT: Yes.

MR. TRIMBLE: Thank you.

MR. ZAREMBA: Your Honor, the fact that we learned after the fact that the drugs were indeed Mr. Pringle's is not a relevant consideration as to whether prior to making that admission the officer had probable cause to arrest Mr. Pringle and whether the statement that Mr. Pringle gave was voluntary. That's what we are concerned with here.

THE COURT: Well, to have fear that you are going to get locked up and you are already locked up, that does not sound like much of a threat. You are already locked up.

MR. ZAREMBA: Again, I will address that.

THE COURT: Let's get back to this, I don't understand where the constitutional violation is. Tell me **[55]** about that.

MR. ZAREMBA: The constitutional violation is two-fold in this case.

THE COURT: Okay.

MR. ZAREMBA: Number one, I do not believe that Officer Snyder had any probable cause to arrest Mr. Pringle. I think there is case law that is right on point such as Collins versus State.

THE COURT: What does that say?

MR. ZAREMBA: 322 Maryland 675. It says that if you are hanging around a car, mere proximity to drugs that are secreted within the car, your physical proximity does not give rise to probable cause to arrest. In Collins versus State, there were several individuals who were standing within five --

THE COURT: He is in the car.

MR. ZAREMBA: I understand that. He is in the car. Again, the drugs are in the back seat in an area where when the police officer approaches the car, he can't see the drugs.

THE COURT: But you have constructive possession. You have to go back to constructive possession, which is the probable cause. It is an arm's reach of where they are. That's the construct, not outside the car after he is taken outside. I mean, you have to deal with him inside the car, **[56]** constructive possession. That is, whether or not there is probable cause. That's the issue.

MR. ZAREMBA: I understand. In every case where Court of Appeals has looked to this issue when there is an individual in proximity to drugs that are not apparent, for instance, Taylor versus State where there is an individual

sleeping in a room and there is marijuana in a bag --

THE COURT: But that didn't go to probable cause. That went to reasonable doubt.

MR. ZAREMBA: No, Taylor found that no rational trier of fact could conclude that Taylor was guilty beyond a reasonable doubt. Collins cites --

THE COURT: Exactly. Exactly.

MR. ZAREMBA: Collins cites Livingston versus State where we have sort of the -- we have the same situation here only in Livingston the drugs were in the front seat. Collins cites Livingston for the proposition that there is no probable cause to arrest an individual. I mean, the driver of the car has constructive possession of what is in his vehicle. Collins points that out. In Collins, they maybe had probable cause to arrest the driver. They may have had probable cause to arrest the individual who removed the cannister of drugs, opened it up in a secretive manner. In Collins, there is absolutely no probable cause to arrest these guys merely because they were near this car.

[57] THE COURT: Okay. They were not even in the car.

MR. ZAREMBA: In Collins they were standing outside the car.

THE COURT: In this case they were in the car. You are saying in Collins that's the basis for me making the decision. I have to deal with the fact of them being in the car, him being in the front seat. The drugs being found not somewhere down the street. They were in the back seat behind an armrest. That's what the officer had in his mind. That's what he decided as to whether or not he had probable cause.

MR. ZAREMBA: Again, the drugs are near where a back seat passenger was seated. I mean, that was the officer's testimony.

THE COURT: Right. But in arm's reach of the front seat passenger. It was not a stretch limousine.

MR. ZAREMBA: The officer testified that when he approached the car, he looked inside and he sees no drugs. He does not testify that he sees any further movement on the part of Mr. Pringle. That Mr. Pringle turned around and placed some drugs in a back seat armrest. He does not see --

THE COURT: And that all goes to reasonable doubt. It does not go to probable cause. I mean, that's a totally different standing. Here we are dealing with a situation as to whether or not a reasonable person may have thought that a person could reach over there and place those [58] drugs within arm's reach behind him, which they could have. It is a 1987 Maxima. That is not a very large vehicle.

MR. ZAREMBA: Your Honor, in Collins, I mean, all the cases --

THE COURT: Those cases deal with probable cause or do they deal with reasonable doubt?

MR. ZAREMBA: Both. Collins cites Livingston versus State.

THE COURT: But in Collins you said that was someone outside the car and not inside the car. That's a whole different situation.

MR. ZAREMBA: But it cites all of those cases for the proposition that to have probable cause to believe that

somebody in possession of something, constructive or otherwise, you have to have some basis to believe that the person is exercising dominion and control over the thing. They cite Dawkins (phonetic), they cite Leech, they cite Livingston all for the proposition that first of all, you have to have some basis for believing that the person knew that the drugs were there. Here there is no basis to conclude that a front seat passenger in the position of Mr. Pringle knew that the drugs were there in the back seat based on the information that the officer had at the time that he arrested Mr. Pringle. Like I said, he looked at the car. He did not see the drugs when he approached the car. There is no basis for him to **[59]** conclude that Mr. Pringle would have likewise seen the drugs or known that they were there. It was only when the officer places the armrest down that the existence of these drugs becomes apparent to anyone. That would be the only situation in which it would be apparent. Again, as a front seat passenger there is absolutely nothing to believe or suspect that the front seat passenger would know that drugs were there. He asked Mr. Pringle and Mr. Pringle denied knowledge.

THE COURT: Well, I think one reason they may know they are there is because he placed them there. Within an arm's reach. That's a reasonable assumption.

MR. ZAREMBA: Again, Your Honor, --

THE COURT: I am thinking only on the fact that they were in arm's reach in the way he was seated. Especially when they were not secreted. They were just basically placed back there and hidden by the armrest. That was the information that he had before he made the arrest.

MR. ZAREMBA: I would argue, Your Honor, that the drugs are secreted under those circumstances. He can't see them. The armrest is certainly placed up there for some

purpose.

THE COURT: To hide them.

MR. ZAREMBA: To hide them.

THE COURT: From the police.

MR. ZAREMBA: Exactly.

[60] THE COURT: Well, he didn't do a very good job. He didn't have much time.

MR. ZAREMBA: I know. It means that the drugs are secreted. Based on what the officer knew at the time that he arrested Mr. Pringle, Your Honor, I would say and I would argue to the Court there was no probable cause to arrest Mr. Pringle.

Then under Supreme Court cases such as Taylor versus Alabama, the mere fact that Miranda rights are given does not mean that the Court should not suppress the evidence. If there is no probable cause to support the arrest, then even Miranda warnings don't secure a consent statement. It does not secure a subsequent infirmity of the arrest.

The second thing that I will argue, Your Honor, I believe that under both Maryland Common Law dealing with voluntariness of confessions and under the fifth and fourteenth amendment and Article 27 of the Maryland Declaration of Rights, the statement was as a result of an improper inducement. That inducement was the threat that if Mr. Pringle didn't own up to the drugs, the other two individuals would be charged.

THE COURT: It was not like he was his mother.

MR. ZAREMBA: I understand that, Your Honor. There is case law I believe is clearly on point. Bellamy versus State, 50 Maryland App. --

[61] THE COURT: What was that?

MR. ZAREMBA: That one was give me a statement to me or I will charge your girlfriend. The Court of Special Appeals held under those circumstances that that was an improper inducement. Stokes versus State is another case. That was a Maryland Court of Appeals opinion, Your Honor.

THE COURT: He has already charged everybody, so he is not saying that I am going to charge you. That case you cited me you said unless you give a statement, I am going to charge so and so. In this case he has already charged everybody.

MR. ZAREMBA: Then he subsequently let them all go.

THE COURT: Right. But that's not a threat. What is the opposite of a threat?

MR. ZAREMBA: It is an inducement. Whether you call it a threat or you call it an inducement --

THE COURT: But everybody is already charged.

MR. ZAREMBA: But you heard --

THE COURT: So, if he keeps quiet, what is going to happen?

MR. ZAREMBA: If he is quiet, then all three remain charged with this offense.

THE COURT: They are already charged, so where is the

threat?

[62] MR. ZAREMBA: When he speaks to two of the three, the charges are -- they are no longer charged. That's the testimony of the officer. He said as a result of Mr. Pringle saying that these drugs were his, Mr. Parlo and Mr. Smith were not prosecuted.

THE COURT: And you think that's the same as the girlfriend?

MR. ZAREMBA: What matters is not the relationship that you have to another individual. What matters is is this an inducement or not.

THE COURT: Okay. So, if they say I am going to charge the guy and if you don't know, that would be an illegal inducement. It has to be some type of relationship for it to have any force and effect.

MR. ZAREMBA: Perhaps in the scenario that you gave, correct. But under the circumstances in this case, I see no distinction between close personal friends, which is what my client testified to, and somebody who is a girlfriend. That's my argument.

THE COURT: Thank you, Counsel.

MR. TRIMBLE: Your Honor, in regard to the statement, first off, to even get to the area of the inducement, we have to take the words of the Defendant as to what happened. Officer Snyder was clear in saying, you know, I may have said at the scene tell me whose drugs they are or I **[63]** am going to lock you all up. He didn't say any of those words once at the precinct. So, if we buy into what Mr. Pringle says that while he is shackled to the wall next to the interview room, the officer

says you got one last chance to tell me or I am going to lock you all up, that he decides well, you know, they are my drugs and I am going to let my buddies go. Amazingly enough Officer Snyder did not say hey, if you tell me they are yours, I will unlock these two guys and let them go. That would be the opposite of the threat that really does not have any force since they are already locked up. Unlike in the Bellamy case, they were actually already locked up, already transported back from the scene to the precinct. The girlfriend in Bellamy was sitting at home. She had never been locked up. She had never been dragged down to the police station and she was not sitting next to Mr. Bellamy shackeled. Mr. Parlo already under lock and key just like Mr. Pringle. Also, Your Honor, you have to take into consideration Mr. Pringle's statement. Not only did the officer make this threat to him, he then directed him to write all these answers.

Now, the Miranda warnings that he allegedly was not read was the one answer oh, yeah, he told me to write that. Well, I asked him about the other stuff because I wanted to know. Mr. Pringle said the officer told me to write everything. He did admit that the officer would have absolutely no idea that **[64]** he should write all that stuff unless the Defendant told him. If the Defendant wasn't being open and honest and cooperative having already been advised of all of those rights, he wouldn't have told him all of those things and Officer Snyder wouldn't have him write down all those things in an effort to coerce this confession and get a lock solid confession in this case.

It is no threat. It is no inducement. The Miranda warnings were properly given. Your Honor, I would ask that in terms of the statement that you find that it is valid and that it comes in.

In regard to probable cause to stop, the State agrees with you, Your Honor. In regard to Collins, all those folks are outside the car. There is a baggie of drugs I believe on the

front seat of the vehicle. The police come up and lock everybody up. In their words, they could have reached in the car to get the drugs. The Court said no. We are not putting an arm's reach through a window of a car that's parked there. However, this is not that situation. It is not a locked compartment or a secret compartment. It is a folding up armrest. The Defendant would have a much better argument in Taylor on reasonable doubt where there was a gentleman who was sleeping in a room where people were smoking marijuana and the Court said the fact that he is asleep in the room would obviate any control or dominion of the drugs being smoked by **[65]** the other folks in the room. But that's not a probable cause case. That's a reasonable doubt case. We are not there. We are at probable cause. Clearly, the police officer who in searching the vehicle finds a large amount of cash in the glove box right in front of the Defendant and then subsequently finds the crack cocaine folded up into the armrest of the rear seat would have probable cause to arrest the Defendant. Therefore, take him downtown or downtown Garrison, read him his rights and subsequently get a valid confession.

Thank you.

THE COURT: Thank you. Very well. The Court has listened to the testimony in this particular case. The Court does feel that the officer acted properly. That the officer did not violate any of the Defendant's constitutional rights. There was a consent search of the vehicle. Upon the search drugs were found within an arm's reach of the Defendant, not in a secretive place or in a locked place. As well as put the armrest back up. The other factor that was not argued is the fact that there was money in front which you have money in front, drugs in the back, both in arm's reach of this particular Defendant, I think the officer had probable cause to make the arrest as he did. He took them to the Garrison Precinct. I don't believe that there were any unconstitutional threats made to him. He gave him

his Miranda **[66]** rights. He asked him if he wanted to make a statement, which he did. The Court does not find any unconstitutional infirmities as well.

Motion denied.

MR. ZAREMBA: Thank you.

THE COURT: Thank you very much.

* * * * * *

(WHEREUPON, the Court adjourned.)

Supreme Court, U.S.
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No. 02-809

IN THE

Supreme Court of the United States

STATE OF MARYLAND,
Petitioner,

v.

JOSEPH JERMAINE PRINGLE,
Respondent.

On Writ of Certiorari To The Court of Appeals of Maryland

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Where drugs and a roll of cash are found in the passenger compartment of a car with multiple occupants, and all deny ownership of those items, is there probable cause to arrest all occupants of the car?

PARTIES TO THE PROCEEDING

The caption contains the names of all the parties to the proceeding in the Court of Appeals of Maryland.

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ARGUMENT:

WHERE DRUGS AND A ROLL OF CASH ARE FOUND IN THE PASSENGER COMPARTMENT OF A CAR WITH MULTIPLE OCCUPANTS, AND ALL DENY OWNERSHIP OF THOSE ITEMS, THERE IS PROBABLE CAUSE TO ARREST ALL OCCUPANTS OF THE CAR. 9

A. This Court's case law has established a fluid, nontechnical concept of probable cause, which requires neither certainty nor correctness, so long as an arrest is reasonable under all the circumstances. 10

B. The rationale of other decisions of this Court establishes probable cause to arrest multiple occupants of vehicles under the circumstances here. 16

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The opinion of the Court of Appeals of Maryland is reported at 370 Md. 525, 805 A.2d 1016 (2002). (Pet. App. 1a-49a). The opinion of the Court of Special Appeals of Maryland is reported at 141 Md. App. 292, 785 A.2d 790 (2001). (Pet. App. 50a-77a). The opinion of the Circuit Court for Baltimore County denying Pringle's motion to suppress is unreported. (Pet. App. 78a-79a; JA 69-70).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on August 27, 2002. (Pet. App. 1a). The petition for writ of certiorari was filed on November 22, 2002. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:
Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Circumstances of the Arrest

At 3:16 a.m. on August 7, 1999, Officer Jeffrey Snyder of the Baltimore County Police Department stopped a 1987 Nissan Maxima for speeding and because the driver was not wearing a seat belt. (Pet. App. 2a-3a; JA 5). Donte Partlow,[1] the owner of the vehicle, was driving; Respondent Joseph Jermaine Pringle was the front seat passenger; and Otis Smith was in the back seat. (Pet. App. 3a; JA 5-6). Unbeknownst to the officer, Pringle earlier had placed a roll of cash in the car's glove compartment, and a bag of crack cocaine behind the armrest located in the back seat. (JA 24).

Officer Snyder asked to see Partlow's driver's license and the registration for the Maxima. (JA 8-9). When Partlow opened the glove compartment to look for his vehicle registration, Officer Snyder saw a large quantity of rolled up cash. (Pet. App. 3a; JA 12). After checking the license and registration with the Maryland Motor Vehicle Administration, the officer gave Partlow a verbal warning and returned Partlow's documents. (JA 7-10, 14). Officer Snyder then asked Partlow whether he had any drugs or weapons in the car. (JA 10). After Partlow answered in the negative, the officer asked for and received Partlow's consent to search the vehicle. (Pet. App. 3a; JA 10).

At that time, the two passengers were asked to exit the

[1]In the transcript of the suppression hearing, Partlow's name appears as "Parlo." Because he is referred to as Partlow in the opinions of the Court of Appeals and Court of Special Appeals, Petitioner adopts that spelling.

vehicle and join Partlow, who was seated on the sidewalk near the car. (JA 11). The search of the front seat area uncovered $763.00 in cash from the glove compartment. (Pet. App. 3a; JA 12). The search of the back seat area, which took ten to fifteen seconds, led to the discovery of a Ziploc bag containing five smaller glassine baggies of suspected crack cocaine. (Pet. App. 3a; JA 12-13). The officer found the drugs when he folded down the rear seat armrest and uncovered the bag, which had been sandwiched between the upright armrest and the back seat. (JA 13, 40-41).

Officer Snyder questioned the three occupants of the car, one at a time, about the drugs and money. (JA 13, 42). The officer first questioned Partlow, who told the officer nothing. (JA 13). He next spoke with Pringle and Smith, who also refused to divulge any information. (JA 13-14). Officer Snyder advised Pringle that they all would be arrested if no one claimed ownership of the drugs. (JA 43). When no one did so, the officer arrested all three and took them to the station house. (Pet. App. 3a-4a; JA 14, 43).

Officer Snyder and the three arrestees arrived at the police station around 4:00 a.m. (JA 44). Before questioning Pringle, the officer informed him of his *Miranda*[2] rights, which Pringle waived. (JA 15-19). Pringle thereafter made an oral and written statement, confessing that the drugs and money belonged to him. (JA 19). Pringle told the officer that he put the crack cocaine behind the armrest of the back seat, and that neither Partlow nor Smith knew about it. (Pet. App. 4a; JA 24). Pringle also said he was going to sell the cocaine or trade it for sex. (JA 26). After Pringle's confession, the officer released Partlow and Smith without charges. (Pet. App. 4a; JA 45). Pringle was charged with possession of cocaine and possession with intent to distribute cocaine. (JA 1, 45).

[2]*Miranda v. Arizona*, 384 U.S. 436 (1966).

B. Suppression Hearing and Trial

A hearing was held on Pringle's motion to suppress evidence on March 23, 2000. (Pet. App. 78a; JA 1, 2-70). At that hearing, Pringle argued that his statements to Officer Snyder should be suppressed because his arrest was illegal, and, further, because the statements were involuntary and not in compliance with *Miranda*. (JA 3-4).[3] Officer Snyder testified at the hearing, setting forth the facts relating to the stop of the car, Pringle's arrest, and Pringle's statement, as set forth above. (JA 4-48). The only other witness at the suppression hearing was Pringle. (JA 49-60). Pringle testified that he grew up with Partlow and Smith, and was close friends with both. (JA 49-50). Pringle confirmed that he initially told the officer at the scene of the stop that he did not know to whom the drugs belonged, but that he subsequently told the officer that the drugs belonged to him. (JA 52, 54-56). Finally, Pringle admitted that he had prior convictions for a first degree sexual offense in 1990 and for distribution of drugs in 1993. (JA 59).

Defense counsel argued that Officer Snyder illegally arrested Pringle. (JA 61). In particular, counsel contended that there was insufficient probable cause to arrest Pringle because he was in the front seat, the officer did not see any movement on Pringle's part, and did not see him place the drugs in the back seat armrest. (JA 61-65). Counsel suggested that the driver could have been arrested because he was in constructive possession of items in the car, or the rear seat passenger could have been arrested because he was closer to the drugs. (JA 62-65).

In support of the arrest, the prosecutor noted that the drugs

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[3]On appeal, Pringle did not press the *Miranda* issue, and the intermediate appellate court resolved the voluntariness issue against him. (Pet. App. 61a-66a). Neither issue was raised in or ruled upon by the Court of Appeals of Maryland. (Pet. App. 1a-34a).

were found behind a folding armrest, not in a locked or secret compartment. (JA 69). When the officer found a large amount of cash in the glove compartment right in front of Pringle, and found crack cocaine in the rear seat, he had probable cause to arrest Pringle. (JA 69). To conclude otherwise, the prosecutor contended, would be to confuse the probable cause standard to arrest with the proof beyond a reasonable doubt standard to convict. (JA 69).

The suppression court agreed with the prosecution's argument and ruled that the officer had probable cause to arrest Pringle. (Pet. App. 79a; JA 69-70). Stressing the difference between probable cause and proof beyond a reasonable doubt, the court found that an inference could be drawn that a person in the front seat could place the drugs "within arm's reach behind him." (JA 63). The court also noted that a 1987 Maxima "is not a very large vehicle." (JA 63). Given that the money in the front and the drugs in the back were both within arm's reach of Pringle, the court concluded that "the officer had probable cause to make the arrest as he did." (Pet. App. 79a; JA 69).

After a two-day trial ending on April 11, 2000, a jury convicted Pringle of possession with intent to distribute cocaine and possession of cocaine. (Pet. App 1a; JA 1). On May 9, 2000, Pringle was sentenced to a term of ten years' incarceration. (Pet. App. 1a; JA 1).

C. Appellate Court Proceedings

On appeal, the Court of Special Appeals of Maryland affirmed Pringle's convictions. (Pet. App. 50a-77a). Maryland's intermediate appellate court rejected Pringle's assertion that the police lacked probable cause to arrest him. (Pet. App. 56a-61a). The court first ruled that "upon finding the cocaine, Officer Snyder had probable cause to believe a felony had been committed, specifically, possession of a controlled dangerous substance." (Pet. App. 57a). The court

then looked to the "nontechnical conception" standard of probable cause as set forth in *Brinegar v. United States*, 338 U.S. 160, 176 (1949). (Pet. App. 57a-58a). The majority concluded: "The circumstances were sufficient to constitute probable cause to make an arrest." (Pet. App. 61a). One judge dissented, finding probable cause to arrest Pringle lacking. (Pet. App. 66a-77a). This judge found it significant that, although Pringle "may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver around the back of his seat, and pull down the arm rest." (Pet. App. 74a).

On certiorari review, the Court of Appeals of Maryland reversed, in a four-to-three decision. (Pet. App. 1a-49a). According to the majority, "the mere finding of cocaine in the back armrest" was insufficient to establish probable cause to arrest a front seat passenger. (Pet. App. 21a). After positing that "[m]oney, without more, is innocuous," the majority discounted the discovery of the cash in the glove compartment because the glove compartment was closed until the driver searched for the vehicle registration. (Pet. App. 22a). The majority suggested that, although the officer did not have probable cause to arrest Pringle, perhaps the driver or the rear seat passenger lawfully could have been arrested: "We hold that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." (Pet. App. 23a).[4]

Judge Battaglia, joined by two other members of the court, dissented, stating at the outset: "The majority's holding that the

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[4]The majority then addressed the issue of attenuation, finding no causal break between the arrest and the confession under *Brown v. Illinois*, 422 U.S. 590 (1975). (Pet. App. 24a-33a). That ruling is not at issue here.

police officers lacked probable cause to arrest [Pringle] for possession of cocaine is based primarily upon an erroneous blending of the probable cause standard for an arrest and the sufficiency of evidence standard for a conviction." (Pet. App. 36a). Continuing, the dissent stated: "The officer should not, however, be required to base a determination to arrest on the ability of the State to meet the standard of legal sufficiency for a conviction; nor should the reviewing courts measure the propriety of the arrest by such a standard." (Pet. App. 39a). The dissent found probable cause to arrest Pringle given that three men were traveling in a vehicle around 3:00 a.m. with a large amount of cash and several baggies of cocaine, and, further, that the location of the drugs and money would lead a reasonable officer to conclude that the three had joint constructive possession of the contraband. (Pet. App. 38a). The dissent concluded: "In my view, this establishes probable cause for the arrest of each of the three individuals, including [Pringle]." (Pet. App. 38a).

SUMMARY OF ARGUMENT

In its nearly two hundred years of Fourth Amendment jurisprudence, this Court consistently has defined probable cause as requiring only a reasonable belief that a crime has occurred. Although the context of those decisions has changed over the years–from the seizure of ships suspected of carrying contraband, to bootleggers, to drug runners–the Court's adherence to a practical, common sense application of the doctrine has remained constant.

Among the matters an officer takes into account when assessing probable cause are inferences that flow from an understanding about basic human behavior. The validity and relevance of these common sense inferences of everyday life have also been recognized in decisions of this Court outside of the probable cause arena. *Wyoming v. Houghton*, 526 U.S. 295 (1999), teaches that when three people are riding in a car, an

officer can draw an inference that all know each other and are engaged in a common enterprise. In a different context, *County Court of Ulster County v. Allen*, 442 U.S. 140 (1979), teaches that if a car contains weapons and drugs, the four people in the car can be presumed to be in joint possession of the contraband.

It naturally follows from the Court's probable cause decisions, together with *Houghton* and *Allen*, that an officer who finds drugs in the rear armrest of a car has probable cause to arrest all passengers in the car. Under those circumstances, the officer often will not know with certainty which one, two, or three of the occupants put the drugs there. Yet probable cause to arrest exists because the officer can draw reasonable inferences that the occupants are acquainted, that they all have ready access to the drugs, and that any one or more of them could have placed the drugs in the armrest.

Any other rule, such as the result reached by the Maryland court here, is anomalous. To hold that the officer cannot arrest the front seat passenger when drugs are found in the back seat leaves only three possible conclusions: no one can be arrested; only the driver can be arrested; or only the occupant closest to the drugs can be arrested. Any of these rules raises the probable cause bar higher than this Court's decisions contemplate. Further, any such rule would lead to incongruous results and would seriously impede society's interests in ferreting out crime and bringing the guilty to justice.

ARGUMENT

WHERE DRUGS AND A ROLL OF CASH ARE FOUND IN THE PASSENGER COMPARTMENT OF A CAR WITH MULTIPLE OCCUPANTS, AND ALL DENY OWNERSHIP OF THOSE ITEMS, THERE IS PROBABLE CAUSE TO ARREST ALL OCCUPANTS OF THE CAR.

The concept of probable cause is central to the law of search and seizure. Indeed, as this Court stated: "A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979). The Warrant Clause of the Fourth Amendment expressly dictates that warrants to search or arrest may not issue in the absence of probable cause. Similarly, warrantless seizures of property and persons generally may not occur without probable cause. When police officers have probable cause to believe that a crime has occurred, they may arrest in a public place without a warrant. *United States v. Watson*, 423 U.S. 411, 421-22 (1976). Likewise, when an officer has probable cause to believe an offense is being committed in the officer's presence, a warrantless arrest may be made. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001).[5]

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[5]Consistent with *Atwater* and *Watson*, Maryland law permits warrantless arrests in the following circumstances:

§2-202. Warrantless arrests—In general.

(a) *Crime committed in presence of police officer.*--A police officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of a police officer.

An officer who makes a lawful traffic stop and lawfully observes drugs in a car occupied only by the driver surely has probable cause to arrest that person for the illegal possession of those drugs. Where there are multiple occupants in the car, the result should be the same. Contrary to the holding of the Court of Appeals of Maryland, there is no valid basis for a rule that when passengers are present during such a stop the officer does not have probable cause to arrest all of them. Indeed, the opposite conclusion is the only sensible one, given the nature of probable cause and its grounding in common sense inferences based on human behavior.

A. This Court's case law has established a fluid, nontechnical concept of probable cause, which requires neither certainty nor correctness, so long as an arrest is reasonable under all the circumstances.

The arrest of Pringle in this case was justified by probable cause in accordance with this Court's description and

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(b) *Probable cause to believe crime committed in presence of officer.*--A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the presence or within the view of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime.

(c) *Probable cause to believe felony committed.*--A police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer.

Md. Code Ann., Crim. Proc. Art., § 2-202 (2001).

application of that standard since the early nineteenth century.[6] The earliest case involving application of a probable cause standard was a forfeiture action. Chief Justice Marshall's opinion in *Locke v. United States*, 11 U.S. (7 Cranch) 339, 348 (1813), spoke to the issue when interpreting a 1799 collection law whereby the burden of proof was on the claimant "only where probable cause is shown for such prosecution." The Court rejected the argument that the term meant "*prima facie* evidence, or, in other words, such evidence as, in the absence of exculpatory proof, would justify condemnation." *Id.* Rather, Chief Justice Marshall concluded, the term connoted a lower standard of proof, "fixed and well known," requiring only that the seizure was "made under circumstances which warrant suspicion." *Id.*

Two cases from the mid-nineteenth century further develop the concept of probable cause. In *The Thompson*, 70 U.S. (3 Wall.) 155, 162-63 (1865), the Court explained "that the capture of a ship was justifiable where the circumstances were such as would warrant a reasonable ground of suspicion that she was engaged in an illegal traffic." The Court noted that this view of probable cause was held by all commentators of that time. *Id.* at 163. Another case of that era involved the standard for judging a "certificate of probable cause of seizure" by revenue agents. *Stacey v. Emery*, 97 U.S. 642, 644 (1878). The Court defined the probable cause standard this way: "If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offence has been committed, it is sufficient." *Id.* at 645. The Court also noted that the 1799 collection statute construed in *Locke* used the words "reasonable cause of seizure," but that there was no difference in the two expressions. *Id.* at 646.

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[6] A recent, comprehensive review of the history of the Court's development of its probable cause standard can be found in Craig S. Lerner, *The Reasonableness of Probable Cause*, 81 Tex. L. Rev. 951, 981-95 (2003).

With the early twentieth century came the National Prohibition Act and the backdrop for modern explication of probable cause. Harkening back to its earlier cases, the Court concluded that officers had probable cause to stop and search a car where "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." *Carroll v. United States*, 267 U.S. 132, 162 (1925). The Court acknowledged that persons traveling in vehicles on the public highways "have a right to free passage without interruption or search," *id.* at 154, but that officers may stop such vehicles if they reasonably believe such vehicles are transporting contraband liquor, *id.* at 154-56. The Court found probable cause to exist where the officers knew only that the vehicle was traveling on a highway from Detroit to Grand Rapids, the highway was an active center for bootlegged liquor, and the "Carroll boys" were in the same vehicle they had been in when they had previously tried to sell whisky to the officers. *Id.* at 160-61. The *Carroll* standard was applied in subsequent cases involving similar prohibition era scenarios. *See, e.g., Husty v. United States*, 282 U.S. 694, 700-01 (1931); *Dumbra v. United States*, 268 U.S. 435, 439 (1925); *Steele v. United States*, 267 U.S. 498, 504-05 (1925).

Perhaps the most complete explanation of the rationale underlying the probable cause standard came in *Brinegar v. United States*, 338 U.S. 160 (1949). Although the national prohibition law had been repealed at the time of Brinegar's conviction, it was still illegal under federal law to import liquor into a "dry" state. *Id.* at 161-62. Brinegar, who was known for hauling liquor, was seen by a federal agent on the evening of March 3, 1947, driving a "heavily loaded" car about five miles west of the Missouri-Oklahoma line. *Id.* at 162-63. The agent knew that Oklahoma was a "dry" state, and that federal law forbade the importation of liquor except under a permit not

generally obtainable. *Id.* at 169. In fact, the agent had arrested Brinegar about five months earlier for illegally transporting liquor, and had seen him loading liquor into a vehicle in Missouri during the preceding six months. *Id.* at 162. After a high-speed chase for one mile, the car was stopped, and more than a dozen cases of liquor were seized. *Id.* at 163. These facts, which the Court found very similar to those in *Carroll*, provided probable cause to arrest because "the agent had good ground for believing that Brinegar was engaged regularly throughout the period in illicit liquor running and dealing." *Id.* at 170.

After applying *Carroll*, the Court explained how the probable cause standard balances the privacy rights of law-abiding citizens with the necessary law enforcement for the community's protection. In explaining the term, the Court stressed that "we deal with probabilities." *Id.* at 175. The standard is to be applied with regard to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.*

The Court summarized the reasons behind the probable cause standard, and why it must permit officers enough room to make reasonable mistakes:

> These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would

> unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

Id. at 176. *See also Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) ("This standard, like those for searches and seizures, represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime.").

In the half-century since the *Brinegar* decision, the Court has consistently preserved this balance, which protects citizens from unfounded arrests but does not unduly hamper law enforcement efforts to arrest those who may be guilty of crime. *See, e.g., Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979); *Gerstein v. Pugh*, 420 U.S. at 111-12; *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Draper v. United States*, 358 U.S. 307, 312-13 (1959). Moreover, the Court has further expounded upon the *Brinegar* description of probable cause in three important ways.

First, the Court has defined the standard with more exactitude. In particular, *Terry v. Ohio*, 392 U.S. 1 (1968), has helped to place the concept of probable cause between the lower standard of reasonable suspicion and the higher one of preponderance of the evidence. In *Terry*, the Court held that the officer, consistent with the Fourth Amendment, could stop and frisk Terry even though there was no probable cause to arrest him. *Id.* at 23, 30-31. Terry's temporary seizure was lawful because the officer had reasonable suspicion that criminal activity was afoot. *Id.* at 30. This Court has since made clear that "'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). This language confirmed the Court's prior explanations that probable cause is a standard lower than preponderance of the evidence. In *Gerstein v. Pugh*, the Court said that the nature of the determination of probable cause "does not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands, and credibility

determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt." 420 U.S. at 121. And in *Illinois v. Gates*, 462 U.S. 213 (1983), in discussing that probable cause requires only a "fair probability" of criminal activity, *id.* at 238, the Court remarked:

> Finely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision. While an effort to fix some general, numerically precise degree of certainty corresponding to "probable cause" may not be helpful, it is clear that "only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause."

Id. at 235 (*quoting Spinelli v. United States*, 393 U.S. 410, 419 (1969)). A fortiori, an officer may have probable cause to arrest even though the evidence at trial would be insufficient to sustain a conviction. *See Michigan v. Summers*, 452 U.S. 692, 695 n.3 (1981); *Brinegar*, 338 U.S. at 172-74.

A second way the Court has built upon the *Brinegar* foundation is by stressing that the assessment of probable cause contemplates consideration of the totality of the circumstances. *Illinois v. Gates*, 462 U.S. at 230-31. The determination, which deals with probabilities, not "hard certainties," contemplates the use of "common-sense conclusions about human behavior." *Id.* at 231. Because "sufficient probability, not certainty, is the touchstone of reasonableness," reasonable mistakes do not negate probable cause. *Hill v. California*, 401 U.S. 797, 804 (1971) (officer reasonably, but mistakenly, arrested wrong person at suspect's home); *cf. Maryland v. Garrison*, 480 U.S. 79, 87-88 (1987) (reasonable mistake of fact does not render execution of warrant illegal). Even observations that might be "readily susceptible to an innocent explanation" are to be considered in the Fourth Amendment determination. *United States v. Arvizu*, 534 U.S. 266, 274 (2002). As the Court pointed out in *Gates*, probable cause is a "fluid concept–turning

on the assessment of probabilities in particular factual contexts–not readily, or even usefully, reduced to a neat set of legal rules." 462 U.S. at 232.

Third, the Court has made clear that the determination of probable cause is to be viewed from the standpoint of an objectively reasonable officer. *See Ornelas v. United States*, 517 U.S. 690, 696 (1996). Factual matters should be viewed "not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Illinois v. Gates*, 462 U.S. at 232. The officer will view "the facts through the lens of his police experience and expertise." *Ornelas*, 517 U.S. at 699. Further, the "officer may draw inferences based on his own experience in deciding whether probable cause exists." *Id.* at 700. These inferences should be given "due weight" by a reviewing court. *Id.* at 699.

From the above cases, the following principles emerge: probable cause is a fluid, nontechnical concept; it is to be determined by a reasonable police officer, through the lens of the officer's experience and expertise; an officer need not be certain or, in hindsight, even correct before making an arrest; common sense inferences about human behavior and everyday life can and should be factored into the probable cause determination; credibility assessments and hypothetical innocent explanations are not crucial; and although the standard is not precisely quantifiable, it requires more than reasonable suspicion, but less than a preponderance of the evidence. Above all else, probable cause must reflect the reasonable judgments of officers who are schooled about human behavior on the street, not after-the-fact assessments of legal scholars.

B. The rationale of other decisions of this Court establishes probable cause to arrest multiple occupants of vehicles under the circumstances here.

Numerous decisions of this Court address the concept of probable cause, yet none has directly spoken to the issue here.

In factually analogous circumstances, however, the Court has given no indication that probable cause to arrest multiple occupants of a car would *not* exist. The Court did not pause to question the validity of the arrests in *New York v. Belton*, 453 U.S. 454 (1981), where all four men in a lawfully stopped car were arrested when the officer smelled burnt marijuana and saw an envelope marked "Supergold." *Id.* at 455-56. And in *United States v. Hensley*, 469 U.S. 221 (1985), although the primary issue related to the legality of the stop of the car Hensley drove, the Court found probable cause existed to arrest Hensley and a passenger after officers found several weapons in the passenger compartment of the car. *Id.* at 235-36. The arrests in *Belton* and *Hensley,* albeit not primarily at issue in those cases, were legal because they comported with common sense and flowed from an understanding of natural inferences about human behavior.

Indeed, when multiple occupants are present in a car containing illegal drugs, a common sense inference can be drawn that any or all of the occupants have knowledge of the drugs found in the car. This is so for several reasons. First, it is common knowledge that drugs often are used and shared by groups of people. Second, the law recognizes the concepts of both joint possession and constructive possession: if drugs are found in a car, all persons in the car can be charged with possession of the drugs. *See County Court of Ulster County v. Allen*, 442 U.S. 140, 143-44 (1979) (four persons in car charged with possession of handguns in passenger compartment and machine gun and heroin in trunk).[7] Third, an inference can be

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[7]By statute and case law, Maryland has long recognized the concepts of joint and constructive possession. *See* Md. Code Ann., Crim. Law. Art., § 5-101(u) (2002) (in controlled dangerous substances title, defining "possess" as "to exercise actual or constructive dominion or control over a thing by one or more persons"); *Rucker v. State*, 76 A.2d 572, 574 (Md. 1950) (conviction of driver for joint possession of illegal lottery tickets upheld where

drawn that persons traveling together in a private passenger car know each other and are engaged in a common enterprise. *Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999). *See also Chambers v. Maroney*, 399 U.S. 42, 44-47 (1970) (where car seen speeding away from gas station that was robbed, probable cause existed to arrest all four occupants in that car an hour later, even though robbery was committed by two men). Fourth, to avoid arrest, a person traveling in a car might hide illegal drugs before being stopped by police, or almost certainly when a traffic stop occurred. *See County Court of Ulster County v. Allen*, 442 U.S. at 164 (persons would naturally attempt to hide handguns from police when stopped); *cf. Rawlings v. Kentucky*, 448 U.S. 98, 101 & n.1 (1980) (man dumped drugs into woman's purse before or when he saw police pull up). Fifth, within the close confines of the passenger compartment of a car, persons have easy access to the entire compartment. *New York v. Belton*, 453 U.S. at 460. Sixth, even if all persons in the car disavow knowledge of the drugs, an officer need not believe such statements, as criminals often will lie in an effort to avoid arrest or prosecution. *See Wyoming v. Houghton*, 526 U.S. at 298 (lying about identification to avoid being connected with drugs in purse). *See also Hill v. California*, 401 U.S. at 803 ("aliases and false identifications are not uncommon").

Although decided in contexts other than probable cause to arrest, two cases of this Court in particular speak to these common sense inferences, which under the circumstances here

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numbers slips found scattered in car and five men seen standing outside car following accident); *Watson v. State*, 306 A.2d 599, 607 (Md. App.) (defendant's conviction for possession of drugs upheld even though he was not present at apartment at time drugs were found there), *cert. denied*, 269 Md. 759, 768 (1973). It is also clear that knowledge of the presence of drugs "may be proven by circumstantial evidence and by inferences drawn therefrom." *Dawkins v. State*, 547 A.2d 1041, 1047 (Md. 1988).

support the officer's determination to arrest Pringle. In *Wyoming v. Houghton*, an officer stopped an automobile in the early morning hours for speeding and driving with a faulty brake light. 526 U.S. at 297. In the front seat of the car were David Young (the driver), his girlfriend, and Sandra Houghton. *Id.* at 298. The officer noticed a hypodermic syringe in Young's shirt pocket and, upon inquiry, Young admitted that he used it to take drugs. *Id.* The two female passengers were ordered out of the car and asked for identification. Houghton falsely told officers that her name was Sandra James and she did not have any identification. *Id.* In the meantime, another officer searched the car for contraband and found a purse on the back seat. When the purse was opened, the officer found a wallet containing Houghton's driver's license as well as drugs and paraphernalia. *Id.* When asked why she lied about her name, Houghton replied: "'In case things went bad.'" *Id.*

Houghton was decided in the context of the search of a passenger's purse under the auspices of the automobile exception to the warrant requirement. The facts and rationale, however, are quite analogous to the issue here of probable cause to arrest a passenger. Three points are particularly apposite. First, the Court recognized that a car passenger "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id.* at 304-05. Second, a criminal might hide contraband in another person's belongings or elsewhere in the car, perhaps even without anyone else's knowledge. *Id.* at 305. Third, a search of the passenger's purse is permitted even if the officer has no affirmative reason to believe that the passenger and driver were engaged in a common enterprise or that the driver had time to conceal an item in the passenger's belongings. *Id.*

These principles apply with equal force in the context of probable cause to arrest. An officer can reasonably infer that all persons in a car containing drugs in the back seat armrest are aware of the drugs and have an interest in concealing them. An

officer can also reasonably conclude that the drugs might have been put there by any person in the car, with or without the knowledge of others in the car. This is so regardless of whether the officer saw any movement in the car as the officer made the stop or approached the vehicle. Consequently, had the syringe or drugs found in the *Houghton* car been located in the back seat armrest, probable cause would have existed to arrest all three occupants.

This Court's decision in *County Court of Ulster County v. Allen* provides even stronger support for a finding of probable cause under the circumstances here. In *Allen*, the Court considered a due process challenge to a New York statute providing that the presence of a firearm in a private automobile, when not found upon the person of any occupant, "is presumptive evidence of its illegal possession by all persons then occupying the vehicle." 442 U.S. at 142 & n.1. A car with four occupants was stopped on the New York Thruway shortly after noon on March 28, 1973. *Id.* at 143. Through a window of the car, the officer saw two loaded handguns in an open handbag on the front floor or the front seat area where a young woman was sitting. *Id.* A loaded machine gun and a pound of heroin were found in the trunk. *Id.* at 144. Three adults (the driver and two rear seat passengers) and the juvenile (front seat passenger) were jointly tried on charges of possession of the two handguns, the machine gun, and the heroin. *Id.* at 143. At a jury trial, all four were convicted of possession of the handguns, but acquitted of possession of the machine gun and heroin. *Id.* at 144.

Because the jury had been instructed "that they were entitled to infer possession from the defendants' presence in the car," *id.* at 145, the defendants challenged the constitutionality of the statutory presumption, *id.* at 144-45. Treating the case as one involving a permissive inference rather than a mandatory presumption, *id.* at 161, the Court noted that such "[i]nferences and presumptions are a staple of our adversary system of factfinding," *id.* at 156. The validity of those devices

under the Due Process Clause depends "on the strength of the connection between the particular basic and elemental facts involved." *Id.* Under the circumstances in *Allen*, the Court found the presumption of joint and constructive possession "entirely rational." *Id.* at 163. The Court looked to several facts and inferences that naturally could be drawn therefrom. First, the passengers were not "'hitchhikers or other casual passengers.'" *Id.* Second, the guns were too large to be concealed in the handbag. *Id.* Third, part of one of the guns was in plain view, within easy access of the driver, and, perhaps, the rear seat passengers. *Id.* Fourth, an inference could be drawn that when the car was stopped for speeding, other passengers in the car attempted to hide their weapons in the handbag. *Id.* at 164. The Court concluded that there was "a 'rational connection' between the basic facts that the prosecution proved and the ultimate fact presumed, and the latter is 'more likely than not to flow from' the former." *Id.* at 165.

Four Justices dissented, reasoning that "an individual's mere presence in an automobile where there is a handgun does not even make it 'more likely than not' that the individual possesses the weapon." *Id.* at 168. The dissent would have found the presumption "unconstitutional because it did not fairly reflect what common sense and experience tell us about passengers in automobiles and the possession of handguns." *Id.* at 173. Yet, even the dissent agreed that the circumstances of the case "would have made it reasonable for the jury to 'infer that each of the respondents was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons.'" *Id.* at 175.

Thus, all nine Justices in *Allen* agreed that it was reasonable to infer that all passengers in the car jointly and constructively possessed the guns found in the front seat area in the open purse of one of the passengers. Given that the probable cause standard is lower than the "more likely than not" standard applicable in *Allen*, perforce there was probable

cause to arrest all four occupants of the car. Similarly, here, there was probable cause to arrest all of the car's occupants because the drugs and money were found in a common area of the car.

C. Under the totality of the circumstances, there was probable cause to arrest Pringle and all other occupants of the car.

When the facts confronting Officer Snyder are viewed in light of well-settled Fourth Amendment principles, there can be no doubt that the officer had probable cause to arrest Pringle and the other two occupants of the car. Indeed, the reasonable inferences that the officer could draw comported with what the reality of the situation was later determined to be. First, the stop occurred at 3:16 a.m., a time when the officer could infer that the three persons in the car were out for an evening of entertainment. In fact, Pringle told the officer that the group was out partying when stopped. (JA 24). Second, the officer could infer that three young men, approximately the same age together in a car at this time of the morning, were friends, not strangers or unrelated persons commuting to work. In fact, Pringle testified that the three grew up together and were close friends. (JA 49-50). Third, because the car was a 1987 Nissan Maxima, the officer could see that all persons in the car had easy access to the entire passenger compartment. In fact, the suppression court found that the area was within arm's reach of Pringle, the front seat passenger. (JA 63-64). Fourth, a large quantity of cash (perhaps proceeds of drug sales) was found in the glove compartment, directly in front of Pringle, which any of the three occupants could have put there. (JA 12). In fact, Pringle told the police that the money was his and that he had placed it in the glove compartment. (JA 24). Fifth, the officer quickly found the drugs behind the rear seat armrest, not in a locked or secret area inaccessible to the passengers. In fact, Pringle confessed to the police that he had placed the drugs

there. (JA 24). Sixth, at the time of the arrest, everyone disavowed knowledge of the drugs and cash, so the officer could infer that any or all persons were in constructive and joint possession. In fact, Pringle later confessed that the drugs and money were his alone. (JA 24). Finally, the drugs were found in five small baggies within a larger Ziploc bag, indicating possible use by more than one person. In fact, Pringle later confessed that he planned to sell or trade the drugs for sex. (JA 25-26). In light of these circumstances, together with the inferences recognized in *Houghton*, *Allen*, and this Court's numerous probable cause cases, the officer lawfully arrested Pringle.

For probable cause purposes, it does not matter that Pringle was not the closest person to the drugs. Nor does it matter that Pringle was not the owner of the car or its driver. If he had not confessed to the crime, perhaps those facts might have helped him escape conviction of the crime. But as pointed out in *Brinegar*, 338 U.S. at 172-74, and *Michigan v. Summers*, 452 U.S. at 695 n.3, the standard of proof beyond a reasonable doubt does not govern probable cause determinations in the least. It is also irrelevant, for probable cause purposes, that possibly only one of the three persons was guilty of the crime. Indeed, it is equally, if not more, probable that two or all three had knowledge of and possessed the drugs. The communal nature of drug possession coupled with the presence of the five separate baggies gave the officer probable cause to believe that all three men were in joint constructive possession of the drugs.

The probable cause to arrest Pringle and the other occupants was strong for several reasons: (1) the officer saw drugs in the passenger compartment; (2) a large quantity of cash was also found in the car; (3) all occupants of the car denied knowledge or ownership of the drugs and money; (4) the car was a relatively small sedan; (5) the drugs and money were within an arm's reach of all occupants; (6) the hour was late; and (7) the drugs were found quickly in an area that was neither locked nor secret. Under the totality of these

circumstances, there was much more than a fair probability that any or all persons in the car possessed the crack cocaine found in the rear seat armrest.

The determination whether there is probable cause to arrest multiple occupants of a car might not be quite so clear in all cases. In other scenarios, the vehicle may be larger than the one here or configured differently than a sedan, the stop may be during daylight hours, or the drugs may be found in a locked console, in the trunk, or even on the person of one of the occupants. The totality of the circumstances would be considered by the officer facing such situations and, in most of them, probable cause would exist to arrest all of the occupants present when contraband was found.

To be sure, in a small number of situations, probable cause would not exist to arrest all occupants of the vehicle. For example, the officer might have specific information that forecloses a reasonable belief that one of the occupants was guilty, thus negating probable cause to arrest that person. Illustrative of this rare situation is *United States v. Di Re*, 332 U.S. 581 (1948), a case erroneously relied upon by the Maryland court below. (Pet. App. 19a-20a). In *Di Re*, the government informant, Reed, told an Office of Price Administration investigator that he was going to buy counterfeit gas ration coupons from Buttitta. 332 U.S. at 583. Reed, seated in the back seat of Buttitta's car, with Buttitta and Di Re seated in the front, held such coupons when the federal investigator and a local police officer arrived on the scene. *Id.* But there was no evidence that Di Re was in the car when Reed obtained the coupons from Buttitta or that Di Re "heard or took part in any conversation on the subject." *Id.* at 593. On being asked, Reed named Buttitta, and not Di Re, as the party who sold him the counterfeit gas ration coupons. *Id.* at 583. The investigator nonetheless arrested Di Re as well, even though the investigator had not witnessed the crime and had not been told that Di Re had anything to do with it. *Id.* Based on "the facts peculiar to this case," the Court found probable cause was

specifically negated as to Di Re. *Id.* at 593-94. Yet, the Court recognized that in other circumstances an inference *could* be drawn that one who accompanies another to a criminal enterprise is not an innocent bystander. *Id.* at 593.

Likewise, probable cause to arrest all persons present in a vehicle would not necessarily exist where there is no nexus among the persons, such as in a cab, bus, or other common carrier. An officer could not reasonably infer that a passenger five rows from the back of a bus acted in concert with an individual in the last row, should drugs be found at the rear of the bus. That situation is analogous to the one in *Ybarra v. Illinois*, 444 U.S. 85 (1979), where a patron of a tavern was searched while officers were executing a search warrant at the premises after having seen drugs on the person of the bartender and behind the bar. *Id.* at 87-88. The search was improper because there was no connection or common enterprise between the bartender and the customer. *Id.* at 91 ("a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person"). But as *Houghton* illustrates, the *Ybarra* situation is a far cry from the situation, like the present case, where occupants of a private car are stopped. 526 U.S. at 303 (distinguishing *Ybarra*). *See also Michigan v. Summers*, 452 U.S. at 695 n.4 (where persons have a special connection to premises about to be searched, they may be detained; *Ybarra* distinguished).

Under the circumstances of the car stop here, unlike the situations in *Di Re* and *Ybarra*, suspicion did not focus on a particular individual to the exclusion of others. Because the drugs were found not on the person of anyone, but behind the armrest within the easy grasp of the three occupants, there was probable cause to arrest Pringle, Smith, and Partlow. By arresting all three, the officer more precisely could determine criminal culpability. Pringle confessed, and the other two were set free. (JA 45). Ultimately Pringle was tried and rightly convicted. (JA 1). If the officer had not arrested Pringle, the

guilty person may never have been brought to justice. Worse yet, had the officer only arrested the driver or the rear seat passenger, it is possible that an innocent person would have been charged, tried, and convicted of an offense he may not have committed.

D. The anomalous rule announced by the Maryland court does not comport with this Court's decisions and is unworkable.

In determining that Officer Snyder did not have probable cause to arrest Pringle under the circumstances here, the Maryland court worded its ruling this way: "We hold that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." (Pet. App. 23a). Because the other occupants of the car were not involved in the case before the state court, it was not entirely clear what rule would be applied in future cases. Logically, however, only three possibilities exist. The first possibility is that no one could be arrested in multiple occupant cases, because the police cannot link the drugs definitively to any one person in the car. A second possibility, hinted at by the Maryland court, would be that the owner or driver, as the person with authority or control over the vehicle, could be arrested. A final interpretation would be that the rear seat passenger, the person closest to the drugs, could be arrested. None of these rules, if applied in future cases on similar facts, would lead to fair, consistent, or coherent results. And, with respect to the second and third rules, practical difficulties would arise in applying them.

The first rule, that no one could be arrested under the circumstances here, is absurd. When an officer stops a car and discovers drugs or other contraband in the passenger

compartment, the officer has probable cause to believe a crime is being committed. To say that the officer *can* arrest if one person is present, but *cannot* if three people are present, is inconsistent with the standard of probable cause set forth in *Brinegar* and its progeny. *Brinegar* recognizes that police officers will confront ambiguous situations and that reasonable mistakes will occur. 338 U.S. at 176.

The consequences of such a rule are untenable. Not only is a criminal (or two or three) allowed to go free, but the officer is put in the unenviable position of having known criminals scoff at the law's authority. Persons would be allowed, even encouraged, to transport drugs with a free pass. So long as the drugs are stored in the car and not on a person, and so long as at least two persons are traveling together, criminal liability could never attach to anyone. *Cf. Wyoming v. Houghton*, 526 U.S. at 305 (rejecting "passenger's property" exception to automobile searches for similar reasons).

The second rule, that only the owner or driver of the car could be arrested, is equally untenable. Although this rule would allow a police officer to arrest *someone*, the person arrested would not necessarily be the one most likely to be guilty. It is just as likely that any of the passengers knows of an item secreted in the back seat, as was the case here. Indeed, owners or drivers who invite others into their vehicles "do not generally search them." *County Court of Ulster County v. Allen*, 442 U.S. at 174 (Powell, J., dissenting). Moreover, it will not always be possible for the officer to determine who was driving the car immediately before the stop. If this rule were applicable, drivers would have an incentive to pull off the road suddenly, particularly at night, and literally jump into the back seat. If an officer then approached a car and saw three people in the back seat, it might not be possible to discern who had been driving, and the officer would be powerless to arrest anyone. Likewise, in other circumstances, it might be difficult to determine if the owner is present and whether that person is or is not the driver.

It makes no legal sense that a person's right to be free from an unreasonable seizure should turn on such considerations. It is unfair to owners and drivers because it singles them out and is tantamount to a presumption of exclusive guilt. The rule also provides an undeserved windfall to all passengers in the car, who are just as likely guilty (or innocent) as the driver. In this regard, the rule undermines the paramount goal of the criminal justice system, to help ensure that those guilty of crimes are ultimately convicted.

The last possible rule, that only the person in closest physical proximity to the drugs can be arrested, suffers the same flaws as the other two. In addition, its implementation raises numerous practical problems. Must officers carry a yard stick or tape measure in the patrol car so that an exact measurement ca be taken? How would the officer know whether the occupants had recently changed positions after stopping for a bite to eat? What would the officer do if the persons jump out of the car before the measurement can be taken? This rule also does not take into account the possibility that one occupant of the car may have secreted the contraband near another occupant, without the latter's knowledge or consent. Thus, the wrong person may be arrested as frequently as not. In Pringle's case, the drugs were closer to the rear seat passenger, Otis Smith, but it was Pringle who had placed the drugs behind the armrest.

Outside the multiple occupant car stop situation, any of the possible Maryland rules would wreak havoc in other probable cause applications. Assume an officer sees four persons sitting around a table playing cards. There is a gun in the middle of the table and one of the players is slumped over the table. No one says a word, but the officer sees smoke lingering in the air. Would the three living players be free to leave because there is no probable cause linking any one of them to the shooting? It certainly would not make sense to conclude that only the owner of the house could be arrested or that the player one inch closer

to the gun could be arrested, but the others could not.[8] The same situation would arise when drugs are found in a motel room occupied by several people or a bomb is located in a makeshift office occupied by three potential terrorists.[9]

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[8]Commentaries support the conclusion that probable cause to arrest everyone exists in such situations, even where only one person and not the others is responsible. Using a similar hypothetical, the Restatement of Torts would find probable cause to arrest all persons around the card table. *See* Restatement (Second) of Torts § 119, comment j (1965) (two persons standing over dead body; where officer not certain which person committed crime, officer can arrest either or both). The Model Code of Pre-Arraignment Procedure permits arrest "without requiring that at the time of the arrest the guilt of the person to be arrested be more probable than not." Model Code of Pre-Arraignment Procedure 14 (1975). Professor LaFave agrees with this position, noting the "investigative function which is served by the making of arrests." 2 Wayne R. LaFave, *Search and Seizure* § 3.2(e), at 65 (3d ed. 1996). If a custodial arrest is made, the police may search the arrestee, "which might produce critical evidence of the crime," or later lead to an identification or a confession. *Id.* at 65-66.

[9]Lower courts have confronted numerous other scenarios and have found probable cause to arrest (or to take other action requiring probable cause against) multiple suspects, even in situations where only one of several persons might be guilty. *See, e.g., United States v. Klinginsmith*, 25 F.3d 1507, 1510 (10th Cir.) (when dog alerted to presence of drugs in car, officers had probable cause to arrest all occupants of car and search car), *cert. denied*, 513 U.S. 1059 (1994); *People v. Sutherland*, 683 P.2d 1192, 1196 (Colo. 1984) (where a car is involved in a fatal accident, and both occupants are taken to the hospital, officer has probable cause to involuntarily extract blood from both, even though only one could have been driving); *State v. Johnson*, 682 So. 2d 385, 387 (Ala. 1996) (where police suspect two people of the child abuse-murder of a young child, either or both may be arrested); *Matter of Grand Jury Investigation*, 692 N.E.2d 56, 57 (Mass.) (where police are investigating the apparent rape of

* * *

Given all of the circumstances of the present case, the officer had probable cause to arrest Pringle, as well as the other two occupants of the car. Simply because it was not possible to determine with certainty which one, two, or three of the persons was in constructive possession of the contraband does not mean that probable cause to arrest was lacking. When situations like the present one occur, seldom is there one person whose guilt is immediately apparent. But that does not mean that an officer is powerless to arrest anyone. Rather, it is reasonable under the Fourth Amendment to arrest everyone.

---

a profoundly retarded young woman who lives with her parents and brother, and police believe either the father or the brother committed the crime, blood sample can be ordered from both), *cert. denied*, 525 U.S. 873 (1998); *Commonwealth v. Sangricco*, 379 A.2d 1342, 1344 (Pa. 1977) (where two people are present at the shooting of a victim, police have probable cause to obtain search warrant ordering a neutron activation analysis on both).

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that the judgment of the Court of Appeals of Maryland be reversed.

Respectfully submitted,

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In The Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

v.

JOSEPH JERMAINE PRINGLE,

Respondent.

On Writ Of Certiorari To The Court Of Appeals Of Maryland

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QUESTION PRESENTED

Where drugs are found hidden in the backseat armrest of an automobile next to the rear seat passenger, does probable cause exist to arrest the front seat passenger?

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STATEMENT OF THE CASE

The State of Maryland charged Respondent with the offense of possession with intent to distribute cocaine pursuant to Md. Code Annotated, Art. 27 §286(a)(1) (1957, 1996 Repl. Vol., 2002 Supp.).[1] Prior to the trial on the merits, a hearing was conducted in the Circuit Court for Baltimore County to consider Respondent's motion to suppress evidence, including a statement, taken in violation of his constitutional rights.

Officer Jeffrey Snyder was the State's sole witness. He testified at the motion to suppress hearing. He stated that on August 7, 1999, while on routine patrol at approximately 3:16 a.m., he observed a 1987 Nissan Maxima traveling at a high rate of speed. (JA 5). He further noticed that the driver of the Maxima was not wearing a seat belt as required by Maryland law. (JA 5). Officer Snyder effectuated a stop of the car for the traffic violations. The Maxima was stopped on a lit residential street. (JA 7). There were three occupants in the car: the driver and registered owner, Donte Parlo; the front seat passenger, Respondent; and a rear seat passenger, Otis Smith. (JA 5-6, 41). Officer Snyder testified that he asked Mr. Parlo for his driver's license and registration. According to Officer Snyder, "I was talking to the driver and asking for his registration, that's when I saw the money in the glove box." (JA 12). After obtaining Mr. Parlo's license and registration, Officer Snyder ran the information through the Maryland State Department of Motor Vehicles

[1] Effective October 1, 2002, this statute was repealed and re-enacted, without substantive change, in Md. Code Annotated, Criminal Law Article, §5-602 (2002).

computer system. (JA 8). During this time, all occupants of the car remained "in their respective spots in the vehicle." (JA 9).

After obtaining the necessary information from the Department of Motor Vehicles, Officer Snyder proceeded back to the Maxima and asked Mr. Parlo to exit the car. (JA 9). Officer Snyder frisked Mr. Parlo after he exited the car and asked "him if he had any weapons on him." (JA 34). Mr. Parlo said that he did not and the pat-down revealed no evidence. (JA 34). Officer Snyder issued a "verbal warning" to Mr. Parlo while Mr. Parlo stood outside of the car. (JA 6). He then returned the license and registration to Mr. Parlo. Before Mr. Parlo could get back into his car, Officer Snyder inquired "if he had anything in the vehicle, any drugs, weapons, narcotics in the vehicle." (JA 10). Mr. Parlo responded that he did not. (JA 10). Officer Snyder then asked of Mr. Parlo "if he would mind that I search his vehicle." (JA 10). According to the officer, Mr. Parlo said "yes, go ahead." (JA 10).

Officer Snyder asked Respondent and Mr. Smith to get out of the car and take a seat on the nearby curb. (JA 35). Respondent and Mr. Smith did as they were told. Before they sat on the curb, however, Officer Snyder asked if either had any weapons on him and, when each responded negatively, Officer Snyder frisked each of them. (JA 37). The frisk of the two passengers bore no incriminating fruit. (JA 37). However, Officer Snyder removed Respondent's driver's license from his pants pocket. (JA 37). By this time, a back-up unit had arrived and the officer with that unit stood near Respondent, Mr. Smith, and Mr. Parlo while Officer Snyder conducted his search of the car. (JA 11). Officer Snyder first searched the driver's side of the car and made no discoveries. (JA 11). He then

proceeded to search the front passenger's seat area and "that's when [he] found the money in the glove box," which he had seen earlier when Mr. Parlo retrieved his documents. (JA 12).[2] Officer Snyder removed "the money" from the glove compartment and put it on the front seat. (JA 12). He then moved to the rear of the car.

Officer Snyder described the back seat as "flat" with the armrest in "the up position." (JA 40). He pulled down the armrest and found drugs "sandwiched" between the armrest and the back seat of the car. (JA 40-41). Specifically, he found "a clear plastic Ziploc baggie containing five smaller glassine baggies containing a white rock-like substance." (JA 13).[3] The drugs were in the rear seat area next to where Mr. Smith had been sitting. (JA 41). After discovering the drugs, Officer Snyder questioned each of the occupants, one at a time, beginning with the driver/owner, Mr. Parlo, in an attempt to discover who owned the drugs. (JA 42). Mr. Parlo provided Officer Snyder with no information. (JA 42). Officer Snyder then took Respondent to the other side of the street and questioned him, to no avail. (JA 43). Mr. Smith was then taken to the other side of the street and questioned, similarly, with no results. (JA 43). Officer Snyder testified that he told all three men that if he did not get an answer as to the ownership of the drugs, he would arrest all three and take them to the precinct. (JA 43). Respondent's testimony

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[2] There was no testimony or documentary evidence presented at the motion to suppress hearing describing the amount or appearance of the money in the glove compartment.

[3] Chemical analysis of the rock-like substance revealed it to be cocaine.

in this regard did not differ from Officer Snyder's account of events. Respondent testified that, at the scene of the arrest, Officer Snyder said "if he didn't find out whose drugs they was, he was going to lock all three of [us] up." (JA 52). When none of the occupants of the car claimed ownership, Officer Snyder arrested all three.

According to Respondent, once at police headquarters, Officer Snyder told all three of the men, "I am going to give you one last chance to tell me whose drugs these are or I am going to charge all three you all with what I found." (JA 53). All three men were interviewed. (JA 46). Respondent confessed to ownership of the drugs and was the only one of the occupants charged with possessing them.

After hearing argument from counsel, the suppression court found that the search of the car was conducted pursuant to a validly obtained consent, ruling that "there was money in front . . . drugs in the back, both in arm's reach of [Respondent]," and, thus "the officer had probable cause to make the arrest as he did." (JA 69).

SUMMARY OF ARGUMENT

Both history and this Court's precedents mandate that a police officer may undertake the major intrusion of an arrest only upon individualized suspicion that a citizen is or has engaged in criminal behavior. Those precedents include instances in which multiple individuals are observed occupying a vehicle, suspicion has fallen upon one of those individuals, yet the police take action against other occupants of the car which comes within the ambit of the Fourth Amendment. Soundly rejecting the notion of

guilt by association, this Court has condemned such action by the police. In the present case, no grounds for individualized suspicion applied to Respondent. His arrest, therefore, contravened the Fourth Amendment.

The position of Petitioner not only treads upon individual liberties secured by the Bill of Rights, but also utterly fails to provide meaningful guidance to the police officer on the street. That position would condition the right to arrest upon the size and configuration of the involved vehicle, and thereby require the officer to make judgments and distinctions grounded on neither common sense nor principle.

This Court should reaffirm and apply the requirement of individualized suspicion, and hold that the total absence of facts pointing to Respondent's involvement in criminal activity rendered his arrest invalid.

ARGUMENT

I. WITHOUT MORE, PROBABLE CAUSE DOES NOT EXIST TO ARREST THE FRONT SEAT PASSENGER IN A CAR WHERE COCAINE IS FOUND HIDDEN IN THE BACKSEAT ARMREST NEXT TO THE BACKSEAT PASSENGER.

Individualized suspicion is a fundamental component of probable cause to arrest. Only two years ago, this Court had occasion to address the authority of police to make warrantless arrests. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001). In determining the scope of that authority with respect to misdemeanor offenses, this Court was guided by

> 'the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing [of the Fourth Amendment],' *Wilson v. Arkansas*, 514 U.S. 927, 931, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995), since '[a]n examination of the common-law understanding of an officer's authority to arrest sheds light on the obviously relevant, if not entirely dispositive, consideration of what the Framers of the Amendment might have thought to be reasonable.' *Payton v. New York*, 445 U.S. 573, 591, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) (footnote omitted).

532 U.S. at 326. Those same considerations, as well as the Court's own precedents, must guide the Court here.

A. The historical foundations of the Fourth Amendment dictate the need for individualized suspicion before an arrest can be made.

An examination of the common law understanding of an officer's authority to arrest demonstrates that individualized suspicion was a core component. Numerous commentators on the subject have concluded that the framers of the Fourth Amendment feared that the newly created Congress would pass legislation permitting general warrants to serve as a basis for arrest or search. *See* Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 590 (1999) ("[T]he Framers adopted constitutional search and seizure provisions with the precise aim of ensuring the protection of

person and house by prohibiting legislative approval of general warrants.")[4]; Thomas K. Clancy, *The Role of Individualized Suspicion In Assessing The Reasonableness of Searches and Seizures*, 25 U. Mem. L. Rev. 483, 489 (1995) ("[T]he historical record overwhelmingly supports the view that the Amendment was designed solely or primarily to address searches and seizures pursuant to a warrant because the colonials were concerned only about those actions."). This fear was well-founded given the experiences of the colonists in England just prior to leaving for the new world. These colonists were subjected to, *inter alia*, mandates of arrest "*per speciale mandatum domini regis*" – upon the fiat of the king. N. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution*, 30-31 (1937).[5]

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[4] The most widely accepted meaning of "general warrant" was "a warrant that lacked specificity as to whom to arrest or where to search; for example, a warrant directing arrests of 'suspected persons' or a search of 'suspicious places.'" Davies, 98 Mich. L. Rev. 547 n. 12 (1999).

[5] Indeed, according to one commentator, these suspicionless seizures upon fiat of the king greatly influenced the text of Article 14 of the Massachusetts Declaration of Rights adopted in 1780 which, in turn, served as a model for the Fourth Amendment. Article 14 of the Massachusetts Declaration of Rights provided that "[e]very subject has a right to be secure from all unreasonable searches and seizures of his person, his house, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied *with a special designation of the person* or objects of search, arrest, or seizure; and no warrant ought to be issued, but in cases, and with the formalities prescribed by the laws." E. Washburne, *Massachusetts Bill of Rights, Massachusetts Historical Society Proceedings, 1864-1865* (Boston, 1866), VIII, 312-313 (emphasis added).

The framers of the Fourth Amendment were also greatly influenced by several highly publicized English cases. In particular, in 1762, John Wilkes, then a member of Parliament, published, anonymously, a series of pamphlets called The North Briton, which criticized the policies of the Tory government. In response, Lord Halifax issued a general warrant to four messengers ordering them "to make strict and diligent search for the authors, printers, and publishers of seditious and treasonable papers, entitled, The North Briton, No. 45, . . . and them, or any of them, having found, to apprehend and seize, together with their papers." Who should be arrested and what should be seized was left completely to the discretion of the messengers. In all, 49 persons were arrested. From this group, it was ascertained that John Wilkes was the author of The North Briton. Wilkes was arrested and later released due to his privilege as a member of Parliament. Wilkes and the other arrestees brought suit against the messengers for trespass. Wilkes prevailed and the English courts ruled that the general warrants to arrest and search violated the common law. Further, Wilkes won a verdict against the Secretary of State who had issued the general warrant. In that suit, Chief Justice Pratt, addressing the power of messengers "to search wherever their suspicions may chance to fall" and "where no offenders' names are specified in the warrant," stated "[i]f such a power is truly invested in a secretary of state, and he can delegate this power, it certainly may affect the person and property of every man in this kingdom, and is totally subversive of the liberty of the subject." *Wilkes v. Wood*, 19 How. St. Tr. 1153, 98 Eng. Rep. 489 (K.B. 1763). It was this hostility toward the arbitrary use of general warrants that animated the framing of the Fourth Amendment. *Payton v. New York*, 445 U.S. at 583 ("It is familiar history that

indiscriminate searches and seizures conducted under the authority of 'general warrants' were the immediate evils that motivated the framing and adoption of the Fourth Amendment.").

History also demonstrates that the framers had little or no concern with whether arrests were made without a warrant because of the very limited authority to arrest under such circumstances at common law. *See United States v. Watson*, 423 U.S. 411, 429 (1976) ("There is no historical evidence that the Framers or proponents of the Fourth Amendment, outspokenly opposed to the infamous general warrants and writs of assistance, were at all concerned about warrantless arrests by local constables and other peace officers.") (Powell, J. concurring). At common law, a peace officer could arrest without a warrant under three circumstances: for an offense committed or attempted in his presence; for commission of a felony if the arrestee was *actually guilty* of the felony; or if a felony *in fact* had actually been committed and there was "probable cause of suspicion" to believe the arrestee was the perpetrator. Davies, at 632.[6] Thus, at common law, arrests

[6] Amicus, Criminal Justice Legal Foundation (hereinafter CJLF), cites the common law "hue and cry" in support of its argument that the "common law did not require the constable to single out one individual from a group of suspects before making an arrest." Br. CJLF 10. Quite to the contrary, the common law process of soliciting civilian assistance to arrest suspected felons otherwise known as the "hue and cry" required that the description of the suspect be as detailed as possible. "If he knows the name of him that did it, he must tell the constable the same. If he knows it not, but can describe him, he must describe his person, or his habit, or his horse, or such circumstances that he knows, which may conduce to his discovery . . . " 2 M. Hale, *The History of the Pleas of the Crown* 100-01 (1847).

based on probable cause *alone* were insufficient. The arresting peace officers had to know that a felony *in fact* had been committed as well as have probable cause to suspect that a particular person committed the felony.

In England, it was not until 1827, after the Fourth Amendment had been ratified, that the authority to arrest on probable cause alone was established. *Beckwith v. Philby*, 108 Eng. Rep. 585 (1827). The first reported American cases to endorse the probable cause standard for warrantless arrests appear to be *Russell v. Shuster*, 8 Watts & Serg. 308, 309 (Pa. 1844), and *Rohan v. Sawin*, 59 Mass. (5 Cush.) 281 (1850). Davies, at 636-37. While the need to establish that a felony in fact had been committed was no longer necessary, the requirement of individualized suspicion remained.

B. Cases from this Court hold that individualized suspicion is a core component of probable cause to search or arrest.

As noted by Petitioner, Br. Pet. 12, the most complete explanation of probable cause was given by this Court in *Brinegar v. United States*, 338 U.S. 160 (1949), which, in part, defined probable cause as requiring "less than evidence which would justify . . . conviction" but "more than bare suspicion." *Brinegar*, 338 U.S. at 175. The Court was careful to point out that its definition of probable cause "seek[s] to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime" while at the same time "seek[s] to give fair leeway for enforcing the law in the community's protection." *Brinegar*, 338 U.S. at 176. The Court acknowledged that "room must be allowed for some mistakes" but that "those mistakes must be those of reasonable men,

acting on facts leading sensibly to their conclusions of probability" so that "law-abiding citizens [are not left] at the mercy of the officers' whim or caprice." *Id.* The Court in *Brinegar* qualified its statement regarding mistakes by referencing its decision in *Carroll v. United States*, 267 U.S. 132 (1925).

Carroll is most notable for developing the "automobile exception" to the warrant requirement. In *Carroll*, the police, without a warrant, stopped a car on suspicion that it contained illegal liquor. Given the impracticability of securing a warrant "because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought," the Court ruled that "contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant." *Carroll*, 267 U.S. at 153-54. Notwithstanding this otherwise broad authority to search, the Court emphasized that the authority to search was not unlimited. "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search." *Id.* Echoing this limitation, the Court in *Brinegar* held that "[t]his does not mean, as seems to be assumed, that every traveler along the public highways may be stopped and searched at the officers' whim, caprice or mere suspicion." *Brinegar*, 338 U.S. at 177.

This Court revisited the question of probable cause in *Illinois v. Gates*, 462 U.S. 213 (1983), holding that a totality of the circumstances analysis must guide probable cause determinations. In so holding, the Court cited with approval *United States v. Cortez*, 449 U.S. 411 (1981). The

Cortez Court was concerned with whether a sufficient basis existed to justify an investigative stop of a car by border patrol officers. The Court in *Cortez* explained:

> But the essence of all that has been written is that the totality of the circumstances – the whole picture – must be taken into account. Based upon that whole picture the detaining officers must have a *particularized* and objective basis for suspecting the *particular* person stopped of criminal activity. . . .
>
> The idea that an assessment of the whole picture must yield a *particularized* suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all the circumstances.
>
> * * *
>
> The second element contained in the idea that an assessment of the whole picture must yield a *particularized* suspicion is the concept that the process just described must raise a suspicion that the *particular* individual being stopped is engaged in wrongdoing.

Cortez, 449 U.S. at 417-18 (emphasis added).

In *Carroll*, *Brinegar*, and *Gates*, the Court reaffirmed the requirement of particularized suspicion. In those cases, the suspicion was focused on particular suspects and the issue was whether there was sufficient probable cause to believe that a crime had been committed. In the case now before the Court, the focus is not on whether there was probable cause to believe that a crime had been committed, for there plainly was. The question, rather, is

whether the police had probable cause to arrest Respondent, for whom there was no particularized suspicion of wrongdoing. The issue is not completely foreign to this Court as the path was trod over fifty years ago, was reaffirmed as recently as four years ago, and remains consistent with the common law requirement of particularized suspicion.

In *United States v. Di Re*, 332 U.S. 581 (1948), an informant named Reed notified government agents that he was to buy counterfeit gasoline ration coupons from a man named Buttitta at a specified location. The agents followed Buttitta's car to that location. When the agent approached the car, he found Buttitta in the driver's seat, Reed in the rear seat and Di Re in the front passenger seat. Reed was holding in his hand two counterfeit gasoline ration coupons. When asked, Reed stated that he obtained the coupons from Buttitta. The agent arrested all three occupants of the car and found counterfeit coupons during a search of Di Re. *Di Re*, 332 U.S. at 583.

Regarding the validity of Di Re's arrest, the Court first found it necessary to determine the particular offense for which Di Re had been arrested. *Di Re*, 332 U.S. at 591. *See Brinegar*, 338 U.S. at 175 ("[t]he standard of proof is accordingly correlative to what must be proved."). Given the absence of an applicable federal statute, the Court noted that "the law of the state where an arrest without warrant takes place determines its validity." *Di Re*, 332 U.S. at 589. The applicable New York statute allowed arrest for a misdemeanor if "committed in the arresting officer's presence," and, for a felony, the officer had to have

"reasonable grounds to believe *the person to be arrested* . . . committed [the felony]." *Di Re*, 332 U.S. at 589 n. 7 (emphasis added).[7] The Government, on appeal, conceded that Di Re could not have been arrested for the misdemeanor of knowingly possessing counterfeit gasoline ration coupons since Reed was the only person "who was found visibly possessing the coupons." *Di Re*, 332 U.S. at 592.

Turning to the existence of probable cause to arrest for the felony of possessing a known counterfeit writing with intent to utter it as true for the purpose of defrauding the Government, the Court noted that "[a]ll [the Government] had was [Di Re's] presence, and if his presence was not enough to make a case for arrest for a misdemeanor, it is hard to see how it was enough for the felony . . ." *Di Re*, 332 U.S. at 592. Pointing to the difference between the

[7] The applicable Maryland statute is similar:

§2-202. Warrantless arrests – In general.

(a) *Crime committed in presence of police officer.* – A police officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of a police officer.

(b) *Probable cause to believe crime committed in presence of officer.* – A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the presence or within the view of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime.

(c) *Probable cause to believe felony committed.* – A police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer.

Md. Code Ann., Crim. Proc. Art., §2-202 (2001).

misdemeanor offense of knowing possession of counterfeit gasoline ration coupons and the felony offense of possession with intent to utter as true, the Court explained:

> The relevant difference between [the misdemeanor] and [the felony] is that the former declares mere possession of a counterfeit coupon an offense, while the latter defines a felony which *consists not merely of possession but also of knowledge of the instrument's counterfeit character,* and also of intent to utter it as true. It is admitted that at the time of the arrest the officers had no information implicating Di Re and no information pointing to possession of any coupons, unless his presence in the car warranted that inference. *Of course they had no information hinting further at the knowledge and intent required as elements of the felony under the statute.*

Di Re, 332 U.S. at 592 (emphasis added). Thus, like the Court of Appeals of Maryland in Respondent's case, the Court undertook an analysis of the character of the particular offense, including its relevant elements, for which the Government claimed to have probable cause to arrest.[8] Di Re's presence in the car, without more, was deemed

[8] The Court of Appeals of Maryland held that

> [T]o determine whether a police officer had probable cause to make a warrantless arrest, we evaluate the totality of the circumstances as to whether the facts and circumstances, with rational inferences derived therefrom, would lead a reasonable person to believe that a felony has been or is being committed. In a specific case, we apply the elements of the alleged offense to the facts and circumstances of that case to determine whether the police officer had probable cause to make a warrantless arrest of a particular individual for that specific offense. Pet. App. 20a-21a.

insufficient to give the officer probable cause to believe Di Re either knowingly possessed the ration coupons or knew of their counterfeit character.

Of particular importance to Respondent's case is the acknowledgment in *Di Re* that probable cause must be analyzed in relation to the elements of the offense for which one is arrested. As noted earlier, Respondent was charged with possessing cocaine with the intent to distribute. The Court of Appeals of Maryland thus examined, quite appropriately, the elements of this offense including "the exercise of actual or constructive dominion or control over a thing" and "knowledge of the controlled dangerous substance." Pet. App. 8a-9a.[9] The Court of Appeals of Maryland also reached the proper conclusion that, as in *Di Re*, Respondent's presence in the car where cocaine was found hidden in the back seat, without more, does not constitute probable cause to believe Respondent either knew of the presence of the drug or exercised any dominion or control over it.

The Court in *Di Re* also examined the facts for any inferences of participation by Di Re in the sale of the ration coupons by Buttitta to Reed that would establish probable cause to arrest for conspiracy. The Court held:

> There is no evidence that it is a fact or that the officers had any information indicating that Di Re was in the car when Reed obtained ration

[9] Even the dissenters in the Court of Appeals of Maryland acknowledged that "the arresting officer must comprehend that which 'possession of a controlled dangerous substance' entails." Pet. App. 39a.

> coupons from Buttitta, and none that he heard or took part in any conversation on the subject.
>
> * * *
>
> An inference of participation in conspiracy does not seem to be sustained by the facts peculiar to this case. The argument that one who 'accompanies a criminal to a crime rendezvous' cannot be assumed to be a bystander, forceful enough in some circumstances, is farfetched when the meeting is not secretive or in a suspicious hideout but in broad daylight, in plain sight of passersby, in a public street of a large city, and where the alleged substantive crime is one which does not necessarily involve any act visibly criminal. If Di Re had witnessed the passing of papers from hand to hand, it would not follow that he knew they were ration coupons, and if he saw that they were ration coupons, it would not follow that he would know them to be counterfeit. Indeed it appeared at the trial to require an expert to establish that fact. Presumptions of guilt are not lightly to be indulged from mere meetings.

Di Re, 332 U.S. at 593.[10] Like the situation in *Di Re*, there was nothing *visibly* criminal done in Respondent's

[10] The U.S. Solicitor General asserts that "[e]ven if the drugs are hidden from plain view by the time they are discovered by police officers, the fact that a party attempted to conceal the drugs within the passenger compartment indicates that the contraband had been manipulated in the presence of the other occupants." Br. U.S. 15. There is absolutely no indication in the record that the cocaine found secreted in the back seat had been "manipulated" in anyone's presence, let alone in Respondent's.

presence, hence, no reasonable inference of participation by Respondent in the possession of the hidden cocaine could be drawn solely from his presence in the car.

Johnson v. United States, 333 U.S. 9 (1948), was decided one month after *Di Re*. In *Johnson*, an informant directed experienced narcotics officers to a specified hotel, claiming that persons inside were smoking opium. From the hallway in the hotel the officers detected the smell of burning opium and traced the odor to Room No. 1. Not knowing who occupied the room, the officers knocked and, when a voice from within asked who was there, one of the officers identified himself. After a slight delay, a woman answered the door and, after being told that the officer wished to speak to her "about this opium smell," she stepped back and admitted the officers. When the occupant denied that there was a smell of opium, the officer said, "I want you to consider yourself under arrest because we are going to search the room." The search turned up opium. *Johnson*, 333 U.S. at 12. The Government defended the search as one conducted incident to arrest. *Johnson*, 333 U.S. at 13.

Addressing the legality of the arrest this Court held:

> 'The Government, in effect, *concedes that the arresting officer did not have probable cause to arrest petitioner until he had entered her room and found her to be the sole occupant*. It points out specifically, referring to the time just before entry, "For at that time the agents did not know whether there was one or several persons in the room. It was reasonable to believe that the room might have been an opium smoking den." And it says, ". . . that when the agents were admitted into the room and found only the petitioner

> present they had a reasonable basis for believing that she had been smoking opium and thus illicitly possessed the narcotic." Thus *the Government quite properly stakes the right to arrest, not on the informer's tip and the smell the officers recognized before entry, but on the knowledge that she was alone in the room,* gained only after, and wholly by reason of, their entry of her home.

333 U.S. at 16 (emphasis added; footnote omitted). Quite clearly, since the officers could not have focused their suspicion on Johnson in particular until *after* they had illegally entered her hotel room, the arrest was illegal. The Court, therefore, ruled that the officers did not have probable cause to arrest Johnson at the moment just prior to the entry. Although, as it turned out, Johnson was, in fact, alone in the room, the officers did not know this fact at the time of the arrest. If the hotel room had, in fact, been a "smoking den," then Johnson's mere presence, without more, would not have established probable cause for her arrest.

Wong Sun v. United States, 371 U.S. 471 (1963), also concerned whether probable cause existed to arrest a particular individual. Armed only with information from an untested informant that he had purchased an ounce of heroin from "Blackie Toy, [a] proprietor of a laundry on Leavenworth Street," police arrested James Wah Toy, the operator of a laundry establishment known as "Oye's Laundry" on Leavenworth Street. This Court soundly rejected the Government's argument that Toy's arrest was legal.

> We have held that identification of the suspect by a reliable informant may constitute probable cause for arrest where the information given is

> sufficiently accurate to lead the officers directly to the suspect. . . . That rule does not, however, fit this case. For aught that the record discloses, [the informant's] accusation merely invited the officers to roam the length of Leavenworth Street (some 30 blocks) in search of one 'Blackie Toy's' laundry – and whether by chance or other means (the record does not say) they came upon petitioner Toy's laundry, which bore not his name over the door, but the unrevealing label 'Oye's.' Not the slightest intimation appears on the record, or was made on oral argument, to suggest that the agents had information giving them reason to equate 'Blackie' Toy and James Wah Toy – *e.g.*, that they had the criminal record of a Toy, or that they had consulted some other kind of official record or list, or had some information of some kind which had *narrowed the scope of their search to this particular Toy.*

Wong Sun, 371 U.S. at 480-81 (emphasis added). The Court compared the action of the police there to "the wholesale or 'dragnet' search warrant, which we have condemned." *Wong Sun*, 371 U.S. at 482 n. 9. Officer Snyder, in the instant case, similarly failed to narrow the focus of his arrest. Indeed, to the contrary, he admittedly arrested all three occupants *because* he could not determine who possessed the cocaine.

Di Re, Johnson, and *Wong Sun*, like Respondent's case, examined the existence of probable cause in the context of warrantless arrests and demonstrate the Court's adherence to the common law requirement of particularized suspicion.

The Court applied the same requirement of individualized suspicion in the context of a search conducted

pursuant to a warrant in *Ybarra v. Illinois*, 444 U.S. 85 (1980). After investigating information obtained from an informant, Illinois police officers obtained a warrant to search the Aurora Tap Tavern, a small, one-room bar. *Ybarra*, 444 U.S. at 88. The probable cause detailed in the warrant application indicated that the bartender of the tavern was engaged in the sale of heroin which he kept behind the bar. *Ybarra*, 444 U.S. at 88. The warrant authorized the search of the tavern as well as the person of 'Greg,' the bartender, for evidence of possession of narcotics. *Ybarra*, 444 U.S. at 88.

Seven or eight officers proceeded to the tavern to execute the warrant. Once there, they advised all patrons of their purpose and further stated that they were going to conduct a "cursory search for weapons" on each of the patrons. *Ybarra,* 444 U.S. at 88. Ybarra was standing in front of the bar when he was frisked twice. *Ybarra*, 444 U.S. at 89. During the second frisk, the officer found heroin in a cigarette pack taken from Ybarra's pants pocket. Ybarra challenged the authority of the police, while executing a valid search warrant, to search his person absent any information in the warrant casting suspicion upon him. *Ybarra,* 444 U.S. at 89. The Court reversed Ybarra's conviction and held:

> It is true that the police possessed a warrant based on probable cause to search the tavern in which Ybarra happened to be at the time the warrant was executed. *But, a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. . . . Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person.*

> This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be. The Fourth and Fourteenth Amendments protect the "legitimate expectations of privacy" of persons, not places.

Ybarra, 444 U.S. at 91 (emphasis added). As applied to Respondent's case, *Ybarra* is important for two reasons. First, it clearly confirms that individualized suspicion is an irreducible component in the probable cause equation. Second, mere proximity in time and place to one committing a crime is insufficient, by itself, to constitute probable cause. Thus, because Officer Snyder admittedly could not narrow his suspicion to Respondent and relied solely on Respondent's presence in the car where drugs were discovered, there was no probable cause justifying Respondent's arrest.

C. The need for individualized suspicion prohibits arresting all occupants of a car based solely on the discovery of drugs in a hidden compartment inside the car.

Petitioner concedes here that "suspicion did not focus on a particular individual to the exclusion of others." Br. Pet. 25. Nevertheless, Petitioner asserts that Officer Snyder properly arrested all of the occupants because "a common sense inference can be drawn that *any or all* of the occupants have knowledge of the drugs found in the car" and it can be inferred "that persons traveling together in a private passenger car know each other and are engaged in a common enterprise." Br. Pet. 17-18 (emphasis added). Petitioner cites a number of cases in support of

these asserted "common sense inferences" claiming that the cases are "factually analogous." *See, e.g., New York v. Belton*, 453 U.S. 454 (1981); *United States v. Hensley*, 469 U.S. 221 (1985); *County Court of Ulster County v. Allen*, 442 U.S. 140 (1979). Br. Pet. 17.

However, these cases are not analogous at all and, the distinctions between them and the case at bar are critical. First, the legality of the arrest was not at issue in any of the cases cited by Petitioner. Thus, the Court had no occasion to pass on the existence, *vel non,* of probable cause. Second, in each of the cases cited by Petitioner, the contraband found within the car stopped by the police, unlike the hidden drugs in Respondent's case, was in *plain view* of *both* the driver and the passenger. Thus, had the issue in these cases concerned the legality of the arrests, the fact that both the driver and passengers had knowledge of and control over the contraband surely would have constituted probable cause to arrest. *Belton,* 453 U.S. at 455-56 (1981) (Officer smelled burnt marijuana and saw, in plain view, on the floor of the car an envelope marked 'supergold.'); *Hensley*, 469 U.S. at 224 (Officer "stepped up to the open passenger door of Hensley's car and observed the butt of a revolver protruding from underneath the passenger's seat."); *Allen,* 442 U.S. at 164 ("[T]he case is tantamount to one in which the guns were lying on the floor or the seat of the car in plain view of the three other occupants of the automobile.").[11] When contraband is within the plain view and control of all occupants of a vehicle, the arrest of all occupants within the vehicle is

[11] The Court, in *Allen,* noted that, at trial, counsel referred to the .45-caliber automatic pistol as a "cannon." *Allen,* 442 U.S. at 165 n. 24.

fully consistent with *Di Re*. In *Di Re*, the Court rejected the argument that probable cause to arrest existed because, *inter alia*, "the alleged substantive crime is one which does not necessarily involve any act *visibly* criminal." *Di Re*, 332 U.S. at 593 (emphasis added).

The *Allen* case is inapposite for an additional reason. *Allen* concerned an issue of evidentiary relevancy. The jurors were instructed, pursuant to a New York statute, that they could infer possession of a weapon from presence in the car. Allen challenged the constitutionality of that statutory presumption as applied to the facts in his case. Finding the statute constitutional, the Court held that the presumption was permissive rather than mandatory. In assessing whether the inference was permissive or mandatory, the Court looked to whether there was a rational connection between the fact proved (presence) and the fact presumed (possession). In concluding that there was a rational connection, the Court stated that

> . . . the facts strongly suggest that Jane Doe was not the only person able to exercise dominion over [the guns]. The two guns were too large to be concealed in her handbag. The bag was consequently open, and part of one of the guns was in plain view, within easy access of the driver of the car and even, perhaps, of the other two respondents who were riding in the rear seat.

Allen, 442 U.S. at 164 (footnotes omitted). The Court held that "it is surely rational to infer that each of the respondents was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons." *Allen*, 442 U.S. at 164.

What is significant, and relevant to Respondent's case, is the comparison drawn by the *Allen* Court between the presumption available in *Allen* to that found unconstitutional in *United States v. Romano*, 382 U.S. 136 (1965). *Allen*, 442 U.S. at 157. In *Romano*, the defendant was charged, *inter alia*, with possessing an illegal liquor still after Government agents executing a search warrant found Romano standing a few feet from an operating still. As to that charge, the judge instructed the jury that "the presence of the defendant at the site of an illegal still 'shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury.'" *Romano*, 382 U.S. at 138. This Court affirmed the reversal of Romano's conviction for possession finding that the mandatory presumption within the statute was unconstitutional. What the Court stated regarding the statutory inference is relevant here:

> . . . if there was 'no rational connection between the fact proved and the ultimate fact presumed, *if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience*. . . . [W]here the inference is *so strained as not to have a reasonable relation to the circumstances of life as we know them* it is not competent for the legislature to create it as a rule governing the procedure of courts.'

Romano, 382 U.S. at 139, quoting *Tot v. United States*, 319 U.S. 463, 467-68 (1943) (emphasis added). Thus, in striking down the statute, the Court found that inferring possession from mere presence near the still was arbitrary and strained in light of common experience and "the circumstances of life as we know them." If, as Petitioner argues, "common sense inferences about human behavior

and everyday life can and should be factored into the probable cause determination," Br. Pet. 16, *Romano* suggests that it is not within the realm of common sense to draw an inference of possession from mere proximity. That connection is even more tenuous when, as in the case *sub judice*, the item Respondent was deemed to possess was concealed.

While conceding that the case does not concern probable cause to arrest, Br. Pet. 18, Petitioner also relies on *Wyoming v. Houghton*, 526 U.S. 295 (1999), as analogous both in its facts and rationale. Br. Pet. 19. But *Houghton* involved the validity of the search of a passenger's purse found inside an automobile for which probable cause to search for contraband existed. The police had probable cause to search for drugs in the car in which Houghton was a passenger. When she exited the car, Houghton left her purse on the back seat. The searching officer looked inside the purse and discovered contraband. *Houghton*, 526 U.S. at 297. The Court in *Houghton* was concerned with the scope of a search under the *Carroll* doctrine, specifically, whether or not that doctrine would permit the search of a passenger's personal belongings which could conceal the object of the search. *Houghton*, 526 U.S. at 300. It did not involve the far more intrusive arrest of the passenger as is the issue in the case at bar. It was in this context that the Court, in *dicta,* stated that car passengers "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Houghton*, 526 U.S. at 304-05. From this benign statement in *dicta*, Petitioner leaps to the conclusion that this inference of "common enterprise" would allow the police to conduct a "severe intrusion on an individual's liberty." *Atwater v. Lago Vista*,

532 U.S. at 365 (O'Connor, J., dissenting). No matter how Petitioner attempts to phrase it, at bottom Petitioner urges that an arrest may be based on nothing more than guilt by association, a proposition which this Court soundly rejected almost 35 years ago. *Sibron v. New York*, 392 U.S. 40, 62 (1968) ("The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security.").

Furthermore, the assertion of the U.S. Solicitor General challenging the "continuing vitality of *Di Re*" in light of this Court's decision in *Houghton*, Br. U.S. 7, is curious. The *Houghton* opinion itself reaffirmed the continued vitality of *Di Re*. The Court distinguished *Di Re* and *Ybarra*, declaring that those cases turned on "the unique, *significantly heightened* protection afforded against searches of one's person," and noted that "[s]uch traumatic consequences are not to be expected when the police examine an item of personal property found in a car." *Houghton*, 526 U.S. at 303 (emphasis added). Moreover, in his concurring opinion, Justice Breyer emphasized "certain limitations" upon the scope of the *Houghton* ruling stating:

> Obviously, the rule applies only to automobile searches. Equally obviously, the rule applies only to containers found within automobiles. And *it does not extend to the search of a person found in that automobile*. As the Court notes, and as *United States v. Di Re*, 332 U.S. 581, 586-87, 68 S.Ct. 222, 92 L.Ed. 210 (1948), . . . makes clear, the search of a person, including even 'a limited search of the outer clothing,' *ante,* at 1302 (quoting *Terry v. Ohio*, 392 U.S. 1, 24-25, 88 S.Ct.

> 1868, 20 L.Ed. 889 (1968)), is a very different matter in respect to which the law provides "significantly heightened protection."

Houghton, 526 U.S. at 308 (Breyer, J. concurring) (emphasis added). That "very different matter" referred to by Justice Breyer is now before the Court.

It bears pointing out that Petitioner's "practical" approach, Br. Pet. 7, to determining the existence of probable cause to arrest in this case is anything but practical. Petitioner's argument that all occupants of a car may lawfully be arrested when drugs are found in a hidden compartment within the car is qualified. According to Petitioner,

> The determination whether there is probable cause to arrest multiple occupants of a car might not be quite so clear in all cases. In other scenarios, the vehicle may be larger than the one here or configured differently than a sedan, the stop may be during daylight hours, or the drugs may be found in a locked console, in the trunk, or even on the person of one of the occupants.

Br. Pet. 24. As a further caveat, Petitioner notes that probable cause to arrest all persons within a vehicle would not exist "where there is no nexus among the persons, such as in a cab, bus, or other common carrier." Br. Pet. 25. Thus, it would appear that whether probable cause can be found to exist, by Petitioner's calculus, turns on such niceties as the size and configuration of the vehicle. Presumably, occupants of compact cars will be subject to virtually automatic arrest while occupants of mobile

homes, recreational vehicles, vans, sport utility vehicles, and stretch limousines will enjoy greater rights.[12] Petitioner's method of determining whether there is probable cause to arrest is no method at all. It is unworkable and provides no guidance to police in calculating whether or not they can arrest.

The U.S. Solicitor General takes a different approach and declares that "the presence of drugs – without more – immediately reveals criminal activity" supporting "an inference that all of the car's occupants were aware of, and hence involved with, the drugs," Br. U.S. 15 (citation omitted). Such an assertion ignores this Court's repeated cautions against dragnet arrests.[13] In only very limited circumstances has this Court condoned broad, suspicionless searches and seizures. And even then, it has done so only "[w]hen such 'special needs' – concerns other than crime detection – are alleged in justification of a Fourth Amendment intrusion . . . " *Chandler v. Miller*, 520 U.S. 305, 313 (1997). *See, e.g., Board of Education v. Earls*, 536 U.S. 822 (2002) (drug testing of students who participate in extra-curricular activities); *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995) (random drug testing of student

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[12] According to the Federal Highway Statistics Report, in 2001, there were 18,222,321 vans and 24,297,697 sport utility vehicles on the road. Together they total approximately 24% of the total number of vehicles on the road.

[13] Moreover, it reveals a total disregard for the realities of daily life. According to the U.S. Census for the year 2000, 15,634,051 people car pooled to work each day. This constituted 12.2% of the workforce. Members of those car pools would, no doubt, be astonished to learn that they had best search the car and its occupants before accepting the ride, lest they be subject to arrest for possessing an item of contraband hidden somewhere, indeed anywhere, within the car.

athletes); *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989) (drug testing for United States Customs Service employees); *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (sobriety checkpoints aimed at removing dangerous drivers from the road).

The only "special need" asserted by the U.S. Solicitor General for such broad-based authority to arrest absent individualized suspicion seems to be to assist the police in "facilitat[ing] further investigation . . . " Br. U.S. 30. Indeed, Amicus, CJLF asserts that such sweeping arrests are "essential to the continuing investigation of a crime," so as to allow for such further police tactics as custodial interrogation. Br. CJLF 19. The argument of Petitioner and Amici in this regard is reminiscent of that made by the State in *Davis v. Mississippi*, 394 U.S. 721 (1969), where the State defended the round-up of 24 African American men for the purpose of fingerprinting them during an ongoing investigation into an alleged rape. The men were released without being charged after the fingerprinting was completed. *Davis*, 394 U.S. at 722. The State, while admitting that the detentions were conducted without warrants and without probable cause, nevertheless contended that "the detention occurred during the investigatory rather than accusatory stage and thus was not a seizure requiring probable cause." *Davis*, 394 U.S. at 726. The Court rejected this rationalization:

> It is true that at the time of the December 3 detention the police had no intention of charging petitioner with the crime and were far from making him the primary focus of their investigation. But to argue that the Fourth Amendment does not apply to the investigatory stage is fundamentally to misconceive the purposes of the Fourth Amendment. Investigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention. Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed 'arrests' or 'investigatory detentions.'

Davis, 394 U.S. at 726-27. If the police cannot detain individuals without individualized suspicion for the purpose of fingerprinting, which the Court in *Davis* noted constituted a "less serious intrusion upon personal security," they surely cannot *arrest* without individual suspicion in order to facilitate further investigation. *Davis*, 394 U.S. at 727 (emphasis added).

This very argument was rejected by the Court in *Mallory v. United States*, 354 U.S. 449 (1957), where the question confronting the Court concerned the applicability of Federal Rule of Criminal Procedure 5(a) requiring that arraignment be held "without unnecessary delay." Mallory had been arrested along with two of his nephews as suspects in a rape. He was held for an extended period of time, during which police extracted a confession, before being taken for arraignment. One of the arguments pressed by the Government was that effective law enforcement should not be hampered. This is similar to the argument presented by Petitioner and Amici. Br. Pet. 24-29; Br. U.S. 23-30; Br. CJLF 19-22. Rejecting that argument in *Mallory*, this Court stated:

> Nor is there an escape from the constraint laid upon the police by that Rule in that two other suspects were involved for the same crime. *Presumably, whomever the police arrest they must arrest on 'probable cause.' It is not the function of*

> *the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on 'probable cause.'*

Mallory, 354 U.S. at 456 (emphasis added). The tactic that the Court rejected in *Mallory* was exactly the tactic employed by Officer Snyder in the instant case.[14]

Police simply may not arrest first and sort out the probable cause later.[15]

Amicus, CJLF further asserts that "[g]iven the importance of interrogations and confessions to solving crimes, . . . the ability to arrest suspects is essential to the continuing investigation of a crime." Br. CJLF 19. The same sort of claim was made and turned aside in *Di Re* where the Court held:

> We meet in this case, as in many, the appeal to necessity. It is said that if such arrests and searches cannot be made, law enforcement will

[14] Officer Snyder testified that he questioned each of the occupants of the car in an attempt to discover who owned the drugs and that he essentially threatened all of the occupants with arrest "if he didn't find out whose drugs" they were. (JA 52).

[15] In the Fourth Amendment context, the Court has been mindful of the potential for abuse when interpreting the authority of the police to act. *See, e.g., Terry v. Ohio*, 392 U.S. 1 (1968). Recently, in Prince George's County, Maryland, the police were taken to task for unnecessarily delaying presentment of defendants before a Commissioner after arrest in order to obtain written statements. In two cases, the Court of Appeals of Maryland reversed the convictions because of this abuse. *See Facon v. State of Maryland*, 2003 WL 21361541 (2002) (delayed presentment for 36 hours after arrest); *Williams v. State of Maryland*, 2003 WL 26361726 (2002) (delayed presentment for 47 hours after arrest).

> be more difficult and uncertain. But the forefathers, after consulting the lessons of history, designed our Constitution to place obstacles in the way of a too permeating police surveillance, which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment.

Di Re, 332 U.S. at 595. That the job of the police in investigating a crime would be made easier by permitting sweeping arrests is not a sufficient justification for dispensing with the inviolate requirement of individualized suspicion.

Petitioner gives short shrift to the effect of permitting sweeping arrests noting that "[b]y arresting all three, the officer more precisely could determine criminal culpability," and remarking, as if this were a fairy tale with a happy ending, that "Pringle confessed, and the other two were set free." Br. Pet. 25. This position ignores the very real possibility that a defendant in Respondent's position would not confess, but would, in fact, invoke his right to remain silent. Further, Petitioner gives no consideration to the real potential that those subject to these suspicionless arrests may be unable to post bail. According to statistics from the Baltimore County Detention Center where the three would have been incarcerated, the average number of days spent in pre-trial detention on a felony charge is 77 days. (Baltimore County Sentenced Inmate Elapsed Report, July 1, 2003, source, Baltimore County Detention Center). The risk that innocent people will spend significant periods of time incarcerated will be greatly enhanced should the police be permitted to arrest all occupants of a car containing hidden contraband regardless of a lack of particularized suspicion.

The approach endorsed by Petitioner and Amici, that is, arresting all occupants even absent a particularized suspicion, Br. Pet. 25 and Br. U.S. 26, relies on the observation in *Brinegar* that "room must be allowed for some mistakes." *Brinegar*, 338 U.S. at 176. But the approach of Petitioner and Amici goes too far. Petitioner and Amici argue that Officer Snyder was justified in arresting all three occupants even if there existed a strong likelihood that innocent persons would be arrested. Br. Pet. 25; Br. U.S. 25; Br. CJLF 13-14. But the reference in *Brinegar* to the possibility of mistakes made by reasonable officers should not be read as to weaken the level of particularized suspicion necessary to constitute probable cause. The primary question at issue in *Brinegar* was whether evidence inadmissible in a criminal trial (hearsay) could form the basis for a finding of probable cause in a pretrial suppression hearing. The Court's language in *Brinegar* that recognizes and allows for some mistakes should be understood as an acknowledgment of the possibility of error in the probable cause determination only in the sense that the fair probability standard for probable cause would ensnare more innocent people than the beyond-a-reasonable-doubt standard required in the criminal trial because it is a less demanding standard. That is a far cry from endorsing a police practice that foreseeably *increases* the number of mistakes.

Moreover, the Court limited the room-for-mistakes allowance to mistakes of "reasonable men, acting on facts leading sensibly to their conclusions of *probability*." *Brinegar*, 338 U.S. at 176 (emphasis added). In other words, by referring to room for mistakes, this Court's opinion in *Brinegar* should not be read to suggest that police may arrest even those for whom there is no

individualized suspicion because mistakes will be made which can be sorted out during subsequent investigation. Rather, the reference to "mistakes" means simply that, in calculating the *probability* that a particular person has committed a crime, the police will fall short of certainty.

Rather than limit the number of reasonable mistakes that may be made, Petitioner and Amici *encourage* mistakes by insisting that everyone, regardless of the lack of individualized suspicion, should be arrested. Respondent's approach, on the other hand, discussed in the following section, would allow the police to arrest the driver/owner of the automobile as well as any passengers for whom a reasonable individualized suspicion may be inferred from the totality of the circumstances where contraband is found concealed inside the car.

II. UNDER THE TOTALITY OF THE CIRCUMSTANCES, THERE WAS NO PROBABLE CAUSE TO ARREST RESPONDENT.

Before undertaking an analysis of the totality of the circumstances in this case, it is important to point out a factual error made repeatedly by both Petitioner and Amici in addressing the circumstances confronting Officer Snyder at the time that he arrested all of the occupants of the car. Continual reference is made in the briefs to the fact that Officer Snyder found a "roll of cash," Br. Pet. 9; Br. U.S. 1, 7, 8, 9, 13, 16; a "large quantity of cash (perhaps proceeds of drug sales)," Br. Pet. 22, 23; a "substantial amount of cash," Br. U.S. 2; "a roll of money totaling $763," Br. U.S. 2; a "bundle of cash," Br. U.S. 9; a "large roll of cash," Br. CJLF 2; and "over $700," Br. CJLF 5. However, a careful reading of the record of the suppression hearing reveals that Officer Snyder's only reference to

what was discovered in the glove compartment was described as "the money." (JA 12). Neither the amount nor any adjective to describe the amount was ever testified to by anyone at the suppression hearing. Nor was any documentary evidence introduced at the suppression hearing quantifying or describing the amount of money.[16] Thus, all references made by Petitioner and Amici describing the money reflect nothing more than reliance on facts not before the suppression hearing judge.[17]

Distilled to its essence, the arrest of Respondent was based on nothing more than his presence in a car in which hidden drugs were discovered. But this Court has held in both *Di Re* and *Ybarra* that mere presence is insufficient to constitute probable cause to arrest or search. Officer Snyder failed to articulate any fact that would support a conclusion that Respondent, as the front seat passenger, possessed the drugs hidden in the rear seat. He made no furtive movements, he made no gestures and, at the scene of the arrest, he said nothing of a suspicious nature; he simply remained silent.

Given this dearth of information tying Respondent to the contraband, Petitioner places significant reliance on the inference that "the occupants are acquainted." Br. Pet. 8. Even if the record supports an inference that the occupants were friends, this alone would not amount to probable cause to arrest Respondent. *See Sibron*, 392 U.S. at

[16] The actual amount was revealed during the trial on the merits.

[17] In Maryland, appellate review of the denial of a motion to suppress is limited to information contained in the record of the suppression hearing and not the record of the trial. *Collins v. State*, 367 Md. 700, 706, 790 A.2d 660 (2002).

40. For purposes of determining who should be arrested under the circumstances of this case, the relationship of the occupants as acquaintances, while a factor to be considered, is not determinative. What is decisive is the distinction that this Court has drawn between drivers and passengers.

In *Rakas v. Illinois*, 439 U.S. 128 (1978), the defendants were passengers in an automobile stopped by the police who had reason to believe the automobile was the getaway car involved in an earlier robbery. The occupants were ordered out of the car, and a search revealed a box of rifle shells in the glove compartment and a rifle under the front passenger seat. The police arrested all of the occupants. Rejecting the argument that the defendants had automatic standing to challenge the search and seizure, this Court concluded that passengers in a vehicle who asserted a possessory interest in neither the vehicle nor the items seized did not have a reasonable expectation of privacy therein. Specifically, the Court held:

> But here petitioners' claim is one which would fail even in an analogous situation in a dwelling place, since they made no showing that they had any legitimate expectation of privacy in the glove compartment or area under the seat of the car in which they were merely passengers. Like the trunk of an automobile, these are areas in which a passenger *qua* passenger simply would not normally have a legitimate expectation of privacy.

Rakas, 439 U.S. at 148-49. Thus, to the extent that one has a reasonable expectation of privacy in a car, it is reasonable for the police to presume he is aware of and can control what is inside the car. If a passenger does not have

a reasonable expectation of privacy in a particular compartment, *i.e.*, in a glove compartment or an upright armrest within the car, then it is not reasonable for police to presume that the passenger has awareness of and control over what is inside those areas absent any facts indicating to the contrary. The *Rakas* decision is consistent with the notion that, without more information, as in the case at bar, police may presume that a driver/owner, but not a passenger, is aware of items hidden within a car. *Cf. Maryland v. Wilson*, 519 U.S. 408, 413 (1997) (recognizing the distinction between drivers and passengers by noting that "[o]n the personal liberty side of the balance, the case for the passengers is in one sense stronger than that for the driver.").[18] That Officer Snyder recognized the superior right of drivers to control the contents of their cars is demonstrated by the fact that it was the driver, Parlo, from whom he sought permission to search the car. Officer Snyder did not ask either passenger for such permission.

In conclusion, there must exist a particularized basis for suspecting that a passenger in a car where contraband is hidden knowingly possesses the contraband in order to arrest the passenger. His mere status as a passenger is not enough. The inferences that Petitioner suggests should be drawn from Respondent's presence in the car are not

[18] Further, the reference in *Houghton*, 526 U.S. at 303, to the reduced expectation of privacy that passengers "no less than drivers" possess must be read in the context of the facts of that case which, as stated earlier, concerned the search of a passenger's purse and not the seizure of the passenger herself. With respect to the more intrusive seizure of the person, even *Houghton* recognized the need for significantly heightened protection.

reasonable and cannot support a conclusion that there was probable cause to arrest Respondent.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the judgment of the Court of Appeals of Maryland be affirmed.

Respectfully submitted,

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No. 02-809

IN THE

Supreme Court of the United States

STATE OF MARYLAND,
Petitioner,

v.

JOSEPH JERMAINE PRINGLE,
Respondent.

On Writ of Certiorari To The Court of Appeals of Maryland

REPLY BRIEF FOR PETITIONER

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REPLY ARGUMENT

I. THERE WAS PROBABLE CAUSE TO ARREST RESPONDENT AND THE OTHER OCCUPANTS OF THE CAR.

When Officer Snyder's lawful stop and search uncovered cash and drugs in the car occupied by Respondent, Partlow, and Smith, the officer properly assessed the totality of the circumstances and determined that there was individualized probable cause to arrest all three men. The arrest was based on much more than Respondent's mere presence in the car. It was supported by the facts and reasonable inferences drawn from those facts, including: both cash and drugs were found in two different parts of the car, supporting an inference that two or more people were engaged in criminal activity; all three occupants denied knowledge of the drugs; the money and drugs were easily accessible to all; it was three o'clock in the morning, a time when few persons are carpooling to work; an inference could be drawn that all three were engaged in a common illicit enterprise; drugs are often sold, and cash is an indicator of such sales; groups of persons often use and sell drugs; drugs can be possessed jointly and constructively; to avoid arrest, persons will hide drugs in a common place or near another; persons who carry illegal drugs will lie to the police to avoid arrest; and persons traveling in cars can easily change places.

Refusing to acknowledge that these facts provided probable cause for his arrest, Respondent takes three equally futile tacks. First, Respondent fails to reckon with the totality of all of the circumstances, choosing instead to focus on some facts, while ignoring others. This, of course, is the wrong approach to probable cause. Second, Respondent attempts to characterize this case as one of guilt by mere presence or by association with others known to be involved in criminality. This does not comport with the realities of the case. Third, Respondent relies on this Court's cases that were decided in

markedly different contexts in an effort to show that he was subjected to a "dragnet" arrest. Given that Respondent was a passenger in a car containing a large quantity of cash and drugs packaged for distribution, it hardly can be said that he was swept up in an overbroad or mass arrest.

A. Respondent's "divide-and-conquer" approach to the totality of the circumstances should be rejected.

Respondent argues that his arrest "was based on nothing more than his presence in a car in which hidden drugs were discovered." Resp. Br. at 36. In so arguing, Respondent highlights some of the facts, while ignoring others. As to the facts he does discuss, Respondent analyzes them in isolation and draws from them only those inferences favorable to him, ignoring equally or more plausible inferences suggesting his complicity in the crime. This "divide-and-conquer"analysis–eschewed in *United States v. Arvizu*, 534 U.S. 266, 274 (2002)–contravenes this Court's totality of the circumstances approach to the Fourth Amendment and should be rejected here.

Respondent points to the fact that the drugs were "hidden" in the car, not in plain view. Resp. Br. at 23; *see* Amici ACLU et al. Br. at 18. It is hardly remarkable that persons in possession of illegal drugs would hide them from others who might see them or from the police when their car is stopped. *See United States v. Ross*, 456 U.S. 798, 820 (1982) (by their nature, contraband goods "must be withheld from public view"). What is significant is that, because the cash and cocaine were in easily accessible areas of the passenger compartment, the officer could infer that each of the occupants had knowledge of the items. Perhaps if the drugs had been located in a remote compartment, which could only be known or accessed by the owner or driver, the situation would be

different, but such was not the case here.[1]

Indeed, although Respondent suggests that the result in *County Court of Ulster County v. Allen*, 442 U.S. 140 (1979), was based on the fact that the contraband was in plain view, Resp. Br. at 23, the Court cited with approval New York's presumption that persons traveling in cars "are aware of, and culpably involved in, possession of dangerous drugs found *abandoned or secreted* in a vehicle." 442 U.S. at 165 n.27 (emphasis added). In explaining the basis for the presumption, the New York commission report stated: "'We do not believe that persons transporting dealership quantities of contraband are likely to go driving about with innocent friends or that they are likely to pick up strangers.'" *Id.* (quoting *Interim Report of Temporary State Comm'n to Evaluate Drug Laws*, N.Y. Leg. Doc. No. 10, at 69 (1972)).[2] Thus, the mere fact that the drugs were concealed in the present case, but the guns in *Allen* were in open view, is not significant for probable cause purposes.

Respondent also makes much of the fact that he was in the front seat, but the drugs were hidden in the back seat. Resp. Br. at 36. Further, Respondent notes that the arresting officer did not see him act suspiciously or make furtive movements. *Id.* This overlooks the fact that a large quantity of cash was found directly in front of Respondent, i.e., in the glove compartment.[3]

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[1] Respondent characterizes the area where the cocaine was found as a "hidden compartment." Resp. Br. at 22, 28. In actuality, the drugs were found in a clear plastic baggie behind a pull-down armrest in the back seat, (JA 13, 40-41), an area within easy reach of all occupants of the passenger compartment.

[2] In the present case, the drugs found were packaged in five small plastic bags, inside a larger Ziploc bag. (Pet. App. 3a; JA 13). Respondent was convicted of possession with intent to distribute cocaine. (Pet. App. 1a; JA 1).

[3] With regard to the money found in the car, Respondent does not dispute that cash was found in the glove compartment. Resp. Br.

It also ignores the fact that the drugs were found within easy reach of the front seat occupants. And, it ignores the fact that, for all the officer knew, Respondent was the rear seat passenger five minutes before the traffic stop occurred.

Under the totality of circumstances, there was probable cause to arrest Respondent and the other occupants of the car. Indeed, in many, if not most, situations where drugs are found in the passenger compartment of a private car, probable cause will exist to arrest all of the occupants.[4] Contrary to Respondent's contention, the ultimate determination of probable cause generally will not "turn[] on such niceties as the size and configuration of the vehicle." Resp. Br. at 28. Rather than any one factor controlling the analysis, the totality of the circumstances is determinative of the probable cause issue.

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at 1. Yet, Respondent challenges the references in the briefs to the amount of money and descriptions of it as a "roll," a "substantial amount," a "large quantity," or whether it totaled $763. Resp. Br. at 35. Significantly, however, the majority opinion of the Court of Appeals states that the officer "seized $763.00 from the glove compartment," (Pet. App. 3a), and the dissent characterizes it as "a large stash of cash in the glove compartment," (Pet. App. 39a). Amici arguing in support of Respondent also refer to the cash as "a large roll of money" totaling "$763." Amici ACLU et al. Br. at 1, 2.

[4] When drugs are found on a bus, on a train, or in a public place, however, the probable cause calculus changes significantly. In such cases, there generally will not be an inference that unrelated people know each other or are engaged in a common enterprise. *See Ybarra v. Illinois*, 444 U.S. 85, 90 (1979) (no connection between customer at tavern and bartender who was subject of search). Contrary to the assertion of amici for Respondent, Petitioner is not seeking to overrule *Ybarra*, nor is it "urging this Court to create a new, *per se* rule that police discovery of contraband provides probable cause to arrest everyone on the scene, even when the contraband *is not in plain view*." Amici ACLU et al. Br. at 22.

Generally speaking, however, passengers in a large sport utility vehicle such as a Ford Expedition will fare much the same as the occupants of a Mini Cooper. Here, the probable cause to arrest Respondent was particularly strong because the arrest occurred at 3:00 a.m., the car was a mid-size sedan, the passengers appeared to know each other, drugs and money were found in two separate and accessible areas of the passenger compartment, and all three occupants denied knowledge of the money and the drugs.

B. Respondent was not arrested merely because of his presence or association with a known criminal.

Respondent incorrectly characterizes Petitioner's position as advocating arrests "absent a particularized suspicion," Resp. Br. at 34, and "based on nothing more than guilt by association," *id.* at 27. To the contrary, Petitioner fully agrees with Respondent that particularized suspicion is necessary for probable cause to arrest. Here, the officer "singled out" Respondent and the two other occupants of the car because the officer had particularized probable cause to arrest all three men.[5]

This is not a case of mere guilt by association. Respondent was not arrested simply because he spoke with or was near

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[5] The repeated references to language from *Vernonia School District 47J v. Acton*, 515 U.S. 646, 668, 678 (1995) (O'Connor, J., dissenting), relating to the requirement of individualized suspicion, although accurate, do not inform the issue here. Amici ACLU et al. Br. at 3, 4, 6, 7, 18. That the Court has permitted suspicionless seizures and searches based upon neutral standards in certain "special needs" cases is irrelevant to Respondent's case. Despite the suggestion by Respondent, Resp. Br. at 29-30, Petitioner has never argued that the arrest here was justified by any special need beyond law enforcement. The garden-variety arrest in this case complied with the historical imperative of individualized probable cause.

someone whom officers had probable cause to arrest. Rather, Respondent was in a car where a clear baggie of drugs was found behind an armrest and a large quantity of cash was discovered in the glove compartment. Under the totality of the circumstances, probable cause necessarily focused on all three occupants, and not on any one of them to the exclusion of the others. Thus, there was a fair probability that Respondent (as well as the other two men) was involved in criminal activity.[6]

The authority Respondent relies upon is inapposite. This case is not the same as *Sibron v. New York*, 392 U.S. 40, 62-63 (1968), in which the Court ruled that officers did not have probable cause to arrest Sibron merely because he had conversations with narcotics addicts over an eight-hour period. Resp. Br. at 27. Had Respondent not been present in the car where drugs were found, but simply was arrested eight hours after he spoke to one of the persons in the car, he might have a point. Here, of course, Respondent was in the car where drugs packaged for distribution were found. Unlike Sibron, Respondent was not arrested merely for his prior conversations with known criminals elsewhere.

The case of *Ybarra v. Illinois*, 444 U.S. 85 (1979), is also unavailing. Pet. Br. at 25. To be sure, the search of Ybarra, one of a number of people in a bar where drugs were found, was illegal. 444 U.S. at 88. The fact that Ybarra "made no gestures indicative of criminal conduct, made no movements that might suggest an attempt to conceal contraband, and said

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[6] Where multiple suspects are concerned, this fair probability judgment must be made individually as to each person. As one commentator states: "Because we cannot quantify the concept of reasonableness, one necessarily can only engage in a commonsense appraisal of the reasonableness of the police activity in question. In the Model Code's words, the basis for each arrest or search must 'be considered independently.'" Joseph D. Grano, *Probable Cause and Common Sense: A Reply to the Critics of Illinois v. Gates*, 17 U. Mich. J. L. Ref. 465, 498 (1984).

nothing of a suspicious nature to the police officers," *id.* at 91, was significant in the context of that case. But it is spurious to argue that the same facts here negate probable cause to arrest Respondent. Respondent seems to argue that unless the police catch someone red-handed, or at least observe some overtly suspicious behavior, they can never arrest the passengers of a car even when an officer finds drugs, easily accessible to the occupants, secreted in the passenger compartment. Under Respondent's approach, presumably it would make no difference whether there was one or three persons in the car, so long as the officer observes no furtive movements or "gestures indicative of criminal conduct." Granted, if Respondent had been arrested merely because he was a passenger in a taxi after the driver was arrested for possession of drugs found in the glove compartment, such an arrest, absent more, would be illegal. Here, however, Respondent was not arrested based on his "mere propinquity to others independently suspected of criminal activity." *Ybarra*, 444 U.S. at 91. Rather, he was as intimately and equally connected to the drugs and cash that precipitated the arrest as were the car's other occupants.

Neither can this Court's decision in *United States v. Di Re*, 332 U.S. 581 (1948), provide Respondent any solace. Resp. Br. at 13-18. The facts of *Di Re* are quite different from those here. Pet. Br. at 24-25. There, a government informant directly implicated the driver, and only the driver. 332 U.S. at 583. There was no evidence implicating Di Re or even showing that he was present in the car at the time of the illegal transaction. *Id.* at 593-94. Even if Di Re had witnessed the transfer of the counterfeit coupons, the crime "does not necessarily involve any act visibly criminal." *Id.* at 593.

A far different situation existed here. This case does not involve a government informant who was present and knew which person or persons had put the money and drugs in the car. Nor was there articulated evidence specifically negating the culpability of Respondent. Respondent and the other two occupants of the car were quite capable of jointly and

constructively possessing the cocaine, a crime that is "visibly criminal." Indeed, recognizing the peculiar facts of *Di Re*, the Court specifically stated that in other circumstances an inference could be drawn that a person who accompanies others to a criminal enterprise is not an innocent bystander. *Id.* at 593-94.

Moreover, *Di Re* was decided long before this Court's more recent decisions establishing that an inference can be drawn that passengers traveling together in a car are engaged in a common enterprise, and that the discovery of contraband justifies an inference of joint culpability. *See Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999); *Maryland v. Wilson*, 519 U.S. 408, 413-14 (1997); *County Court of Ulster County v. Allen*, 442 U.S. at 143-45. Although the impact of those decisions on the continued vitality of *Di Re* is debatable, *see* Amicus U.S. Br. at 20; Amici Ohio et al. Br. at 16, its facts are so different from those of the present case that *Di Re* does not control the outcome here.[7]

C. Respondent was not subjected to a "dragnet" arrest.

In addition to theorizing that he was arrested based on his mere presence at the scene of a crime, Respondent further

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[7] In any event, it can hardly be said that *Houghton* "reaffirmed the continued vitality of *Di Re*," as Respondent contends. Resp. Br. at 27; *see* Amici ACLU et al. Br. at 28. To be sure, *Di Re* was not overruled, but was distinguished on its facts, as was *Ybarra*. *Wyoming v. Houghton*, 526 U.S. at 303. In so doing, the Court remarked that "a car passenger–unlike the unwitting tavern patron in *Ybarra*–will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id.* at 304-05. If anything, the "common enterprise" approach of cases such as *Houghton, Wilson,* and *Allen* supports Respondent's arrest and calls into question the continued efficacy of *Di Re*'s approach to probable cause.

contends he was the victim of an illegal "sweeping" arrest. Resp. Br. at 30-33. Respondent cites three cases: *Wong Sun v. United States*, 371 U.S. 471 (1963), *Mallory v. United States*, 354 U.S. 449 (1957), and *Johnson v. United States*, 333 U.S. 10 (1948). Resp. Br. at 18-20, 31-32. These cases do not inform the issue here. *Wong Sun* would be apposite if a fruit of the poisonous tree or attenuation question were involved, but there is none. *Mallory* would be of use if the case had anything to do with prompt presentment before a judicial officer, but it does not. *Johnson* would be most helpful if Respondent's arrest had taken place in a hotel room or a home, but the necessity of a search or arrest warrant is not implicated here in the least. To be sure, probable cause to arrest is peripherally involved in each case, but the thrust of all three decisions is directed elsewhere.

Several salient facts distinguish *Johnson* from the present case. First, the central point of *Johnson* is that officers must ordinarily obtain a warrant before entering a residence. As the Court stated: "When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent." 333 U.S. at 14. Thus, the problem with the arrest in *Johnson* was not so much one of probable cause as it was with the lack of a warrant. Indeed, at the time of the warrantless entry, "the officers were possessed of evidence which a magistrate might have found to be probable cause for issuing a search warrant." *Id.* at 13. Second, the Court did not need to reach the question of probable cause to arrest Ms. Johnson because the entry itself was illegal and, further, the government conceded the issue. *Id.* at 16. Third, prior to the illegal entry, the officer did not know who or how many people were in the room, what they were doing, and whether drugs would even be found in the room. Finally, a hotel room, house, or apartment is fundamentally different from a car, in terms of size, numbers of persons who might be present, and accessibility to hidden areas. Certainly, given these dramatically distinguishable facts, *Johnson* cannot be read to establish a rule that probable cause does not exist to

arrest multiple occupants of a car when cocaine is found in the passenger compartment of that car.

Nor does *Wong Sun* aid Respondent's argument. In that case, officers learned from an arrestee that he had bought heroin from a person known to him as "Blackie" Toy and that Toy operated a laundry somewhere on Leavenworth Street. 371 U.S. at 473. Based on this information alone, the officers arrested James Wah Toy, who operated a laundry on Leavenworth Street known as "Oye's Laundry." *Id.* at 473-74. As the Court noted, the informant's accusation "invited the officers to roam the length of Leavenworth Street (some 30 blocks)." *Id.* at 480. Toy's name was not over the door, the officers had no reason to equate "Blackie" Toy and "James Wah" Toy, and had no other information to narrow the scope of their search to this particular Toy. *Id.* at 480-81. Indeed, the Court described the information known to the officers as "no better than the wholesale or 'dragnet' search warrant, which we have condemned." *Id.* at 481 n.9.

These facts are far different from those confronting the officer who arrested Respondent. The officer knew that cocaine was in the car and that only three persons were present. Such a narrow focus was wholly lacking in *Wong Sun*, where the scant information pointed to a large universe of potential suspects. The street was 30 blocks long, the laundry's name did not bear that of Toy, and the officers had no reason to believe that Blackie was James Wah. *Id.* at 480-81. The arrest in the present case took place under totally different circumstances. The officer did not search up and down a street for some unknown person based on information provided by an arrestee. The officer lawfully stopped the vehicle for speeding and a seat belt violation. (Pet. App. 2a-3a; JA 5). The officer did not rummage through cars in a 30-block area, looking for evidence of some unknown crime; rather, the officer, after consent, searched a single car. (Pet. App. 3a; JA 10-11). Upon the discovery of cocaine packaged for distribution, the officer arrested the three occupants of that car. (Pet. App. 3a-4a; JA

14, 43).

Finally, Respondent relies upon *Mallory* for the proposition that the officer who arrested him lacked probable cause, and that he was the victim of a mass arrest for the unlawful purpose of investigating a crime. Resp. Br. at 31-32.[8] The decision in *Mallory* did not turn on the legality of the arrest, but rather on the length of time it took to bring the arrestee before a magistrate for a probable cause determination. 354 U.S. at 455. Moreover, the Court's opinion suggests that officers *had* probable cause to arrest Mallory. *Id.* ("the police had ample evidence from other sources than the petitioner for regarding the petitioner as the chief suspect"); *see* Model Code of Pre-Arraignment Procedure § 120.1 commentary at 295 n.14 (1975) (arguing that Court did not suggest arrest of Mallory was illegal). The evil decried in *Mallory* was not an arrest on less than probable cause, but the undue and unnecessary delay in bringing the arrestee before a magistrate. Thus, the Court's admonition at the conclusion of its opinion, that police may not "arrest, as it were, at large," and use the interrogation process to determine probable cause, *id.* at 456, was not directly related to the facts of the case itself. In Respondent's case, of course, the officer did not arrest "at large." The car in which Respondent was riding was not stopped along with 20 or 30 others in the area, on information that some car in the vicinity was transporting cocaine. Rather, the narrowly focused arrest came only after the officer lawfully observed drugs in the car in which Respondent was present.

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[8] Respondent also looks to *Davis v. Mississippi*, 394 U.S. 721 (1969), for comfort. Resp. Br. at 30-31. The round-up of 24 men, without warrants or probable cause, for the purpose of fingerprinting them in connection with an unsolved rape case, *Davis*, 394 U.S. at 722, has nothing in common with the situation here.

II. RESPONDENT'S PROPOSED BRIGHT-LINE RULE THAT THE OWNER OR DRIVER SHOULD ALWAYS BE ARRESTED IS ANTITHETICAL TO THIS COURT'S PROBABLE CAUSE DECISIONS.

Respondent's principal challenge throughout is that an officer must have individualized probable cause before making an arrest and, because probable cause did not focus exclusively on him, Respondent could not be arrested. Logically then, according to Respondent, no one in the car could be arrested because no one was singled out as the perpetrator. Perhaps recognizing the folly of such a position, Respondent switches gears and ultimately argues that he "would allow the police to arrest the driver/owner of the automobile as well as any passengers for whom a reasonable individualized suspicion may be inferred from the totality of the circumstances where contraband is found concealed inside the car." Resp. Br. at 35. As support, Respondent relies upon the distinction this Court drew between drivers and passengers in *Rakas v. Illinois*, 439 U.S. 128 (1978). Resp. Br. at 37-38.

This curious hybrid of a bright-line rule that drivers should always be arrested and a traditional totality of the circumstances approach is illogical and should be rejected for several reasons. First, Respondent's rule is inconsistent with the proper consideration of particularized probable cause. Pet. Br. at 27-28. This Court has "consistently eschewed bright-line rules," *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), and, with respect to probable cause to arrest, has applied a totality of the circumstances test. Pet. Br. at 15-16. To veer from that course, particularly when the rule Respondent posits defies notions of common sense and natural human behavior, is ill-advised.

Second, Respondent's rule is internally inconsistent. Respondent argues at length that the officer lacked individualized suspicion sufficient to arrest him, but then categorically presumes guilt of the driver despite no evidence of wrongdoing beyond that of Respondent himself. Why

should an officer who sees no furtive conduct on the part of anyone in the car presume the driver, but not the passenger, is aware of contraband hidden there, when all in the car have equal access to the area? And, of course, Respondent's rule does not limit the possibility that mistakes may be made, given that owners or drivers who invite others into their vehicles "do not generally search them." *County Court of Ulster County v. Allen*, 442 U.S. at 174 (Powell, J., dissenting). As a matter of common sense, a front or rear seat passenger can easily stash something behind an armrest or in the glove compartment and the driver would be none the wiser.

Finally, the doctrinal underpinning of Respondent's rule rests upon quicksand. The distinction this Court drew in *Rakas* between drivers and passengers has nothing to do with the issue of probable cause to arrest. To say, as the Court did in *Rakas*, that a driver or owner has a greater expectation of privacy in his car than does a mere passenger is one thing. 439 U.S. at 148-49. It is quite another to say, as Respondent does, that the passenger has any less access to the passenger areas of the car.[9] Indeed, passengers in the rear of a car have more, not less, access to that area than does the driver.

In sum, Respondent would have officers arrest the driver, but never the passengers, when a car is stopped and drugs and money are found under the circumstances here. Respondent's rule, not Petitioner's, countenances "a police practice that foreseeably *increases* the number of mistakes," Resp. Br. at 34, as it would have in Respondent's case. Respondent's rule, as well, misapprehends the nature of probable cause. The standard for probable cause is not a sufficiency of evidence standard. Rather, an officer need only make a reasonable judgment about the fair probability of criminal activity. Here, Officer Snyder

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[9] Similarly, in *Rawlings v. Kentucky*, 448 U.S. 98, 101 & n.1 (1980), the defendant could not challenge the search of his friend's purse because he had no legitimate expectation of privacy in it, but he certainly had access to it when he placed his drugs there.

did just that when he arrested Respondent.

CONCLUSION

For the reasons stated herein, and in the State of Maryland's principal brief, the judgment of the Court of Appeals of Maryland should be reversed.

Respectfully submitted,

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No. 02-809

In The Supreme Court Of The United States

STATE OF MARYLAND,
Petitioner,

v.

JOSEPH JERMAINE PRINGLE,
Respondent.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

BRIEF OF OHIO AND 20 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF *AMICI* INTEREST

The State of Ohio, together with 20 other *amici* States and Territories, join the State of Maryland in urging the Court to reverse the decision of the Court of Appeals of Maryland. The *amici* States and Territories suggest that where a police officer faces evidence that a crime has been committed by at least one of the occupants in an automobile stopped by the police, the Fourth Amendment does not require that all of the car's occupants be allowed to go free simply because the evidence fairly implicates all, rather than one of, the suspects. For these reasons and those elaborated below, we offer this brief to urge the Court to reverse the decision of the Court of Appeals of Maryland and to confirm that police officers who encounter multiple suspects traveling together in a private vehicle in which drugs are found in the passenger compartment are not prevented from arresting all of the car's occupants on drug charges when all of the occupants deny ownership of the contraband.

The decision of the Maryland Court of Appeals in this case—holding that a "police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of the car is insufficient to establish probable cause for an arrest of a front seat passenger," Pet. App. at 23a—limits the arrest powers of law enforcement officers in a way that the Fourth Amendment does not require. The court below effectively imposed on law enforcement officers at the time of arrest the kind of admittedly-higher standard that the government must later meet at trial, a result not compelled by this Court's cases.

Amici States share a common interest in the ability of their respective law enforcement officers and their local communities to arrest suspected criminals when probable cause supports those arrests, and in allowing police officers to make sound probable-cause-to-arrest decisions without

imposing on them the burden of deciding whether prosecutors will later be able to prove the case at trial. *Amici* States respectfully urge this Court to reverse the judgment of the Court below and hold that under the totality of the circumstances, a police officer faced with multiple occupants of a car in which drugs and a roll of cash are found in the passenger compartment has probable cause to arrest all of the passengers for constructive possession of the drugs when all of the occupants deny ownership of the contraband and no other evidence points to only one of the suspects as the sole wrongdoer.

SUMMARY OF ARGUMENT

This Court's cases firmly establish that probable cause to arrest exists "where 'the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Draper v. United States*, 358 U.S. 307, 313 (1959), *citing Carroll v. United States*, 267 U.S. 132, 162 (1925). Because probable cause looks to the totality of the circumstances and requires only the "probability or substantial chance of criminal activity, not an actual showing of such activity," *Illinois v. Gates*, 462 U.S. 213, 243 n. 13 (1983), the police in this case reasonably determined that there was probable cause to arrest Pringle as well as the other two passengers in the car. When none of the occupants of the car admitted ownership of the drugs and the roll of cash found in the passenger compartment, and no other evidence effectively singled out one of the occupants as the perpetrator, there was probable cause to arrest all of the occupants for constructive possession of the drugs. The Maryland court's contrary conclusion cannot be squared with this Court's precedent.

Whether single or multiple suspects are involved, probable cause to arrest does not require proof sufficient to establish guilt, *Brinegar v. United States*, 338 U.S. 160, 173 (1949), but instead requires "only the probability, not a prima facie showing of criminal activity," *Illinois v. Gates*, 462 U.S. at 235. Accordingly, this Court's cases do not require that police narrow a list of likely suspects for a crime down to one in order to make an arrest. Under the Maryland court's ruling in this case, it is questionable whether *any* of the three occupants of the car in which Pringle was traveling could be lawfully arrested for possession of the drugs, despite the "substantial chance," *Illinois v. Gates*, 462 U.S. at 243 n. 13, that each was involved in the criminal possession of cocaine. Contrary to the Maryland court's decision, where it is evident that a crime has been committed and at least one of the occupants of the car is the wrongdoer, probable cause exists to arrest all three of the occupants of the car.

As part of police officers' assessment of probable cause in this setting, police officers should be able to consider the likelihood that car passengers will be engaged in a common enterprise with the driver. *Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999). Unlike a movie theater, a public bus, or a restaurant or bar, *cf.* Pet. App. at 21a, n. 12; *Ybarra v. Illinois*, 444 U.S. 85 (1979), passengers in a private automobile are likely to know one another and to have some common purpose for traveling together. *Cf. Maryland v. Wilson*, 519 U.S. 408, 413-14 (1997) (permitting police to order passengers as well as drivers out of a stopped vehicle to preserve officer safety, on the assumption that the passenger and the driver share a common goal).

Evidence that patent criminal activity is occurring in the passenger compartment of a car strengthens the inference of a "common enterprise" among the passengers and driver. *See County Court of Ulster County, New York v. Allen* ("*Ulster County*"), 442 U.S. 140 (1979) (upholding as rational a statutory presumption that the presence in an

automobile of any firearm is evidence of its possession by all persons occupying the automobile at the time the item is found). Where the crime consists of joint and constructive possession of contraband such as drugs or illegal weapons, it is reasonable to conclude that contraband kept in the passenger compartment of a car is within the dominion and control of any occupant of the car. *Cf. Ulster County*, 442 U.S. 140; *New York v. Belton*, 453 U.S. 454, 460 (1981) (permitting search of passenger compartment of automobile in which person arrested was traveling).

The Maryland court's ruling here significantly undercuts police officers' ability to consider these "practical, commonsense conclusions about human behavior" in making probable-cause-to-arrest determinations, *cf. Illinois v. Gates*, 462 U.S. at 231, as officers have done throughout the country for years. *See, e.g., United States v. Buckner*, 179 F.3d 834 (9th Cir. 1999), *cert. denied sub nom. Murry v. United States*, 528 U.S. 1094 (2000) (probable cause to arrest both occupants of car in which drugs were found); *Fernandez v. Perez*, 937 F.2d 368, 370 (7th Cir. 1991) (probable cause to arrest all three occupants of car because absent explanation to the contrary, the metal-piercing bullets found in the car were the property of one, two or all three of the occupants); *Smith v. State*, 363 So.2d 21 (Fla. 1978) (probable cause to arrest passenger when drugs found on seat between passenger and driver; officer could not determine who owned drugs). The Maryland court's rule in this case threatens to have significant detrimental effects on law enforcement efforts throughout the country.

United States v. Di Re, 332 U.S. 581 (1948), does not support the result reached by the Court of Appeals of Maryland in this case. In *Di Re*, a government informant said nothing to incriminate Di Re, the front seat passenger in the car, in the driver's transfer of counterfeit ration coupons to the informant, and the transfer of the paper ration coupons did not in and of itself suggest criminal activity. By contrast,

in this case five baggies of cocaine were stashed behind an upright armrest in the back seat of the car, within reach of all of the occupants of the car, but all three occupants denied ownership of the drugs. The not-so-innocent-looking drugs in the passenger compartment and the claim by all occupants of the car that they were not the owners of the drugs easily differentiate this case from *Di Re*. Additionally, any implication in *Di Re* that police generally are unjustified in inferring a common purpose among occupants of a private passenger car has been severely eroded, if not outright eliminated, by this Court's reasoning in *Wyoming v. Houghton*, 526 U.S. at 304-05, and *Ulster County*, 442 U.S. at 163-65. The Maryland court's decision should be reversed.

ARGUMENT

The Police Officers Here Had Probable Cause To Believe That All Of The Car's Occupants, Including Respondent Pringle, Possessed Drugs, So The Warrantless Arrest Of Pringle Was Valid.

The court below misapplied this Court's precedent when the Maryland court held that there was not probable cause to support the arrest of Pringle where he had not admitted ownership of the drugs found in the car, was not the owner of the vehicle but was "merely the front seat passenger," and the only evidence supporting the arrest was a sum of money in the closed glove compartment and drugs behind the armrest in the back seat of the car. Pet. App. at 2a, 23a. Although the Maryland court acknowledged that a "finding of probable cause requires less evidence than is necessary to sustain a conviction," Pet. App. at 7a, 8a, that court nevertheless looked to sufficiency-of-the-evidence cases as establishing the law for determining possession, even at the probable cause to arrest stage. Pet. App. at 8a-9a, 17a.

Perhaps more importantly, the Maryland court erroneously demanded "additional facts" tending to "establish [Pringle's] knowledge and dominion or control over the drugs," Pet. App. at 21a, concluding that the drugs in the back seat and the roll of cash in the front glove compartment were insufficient to establish probable cause to arrest Pringle. In so doing, the Maryland court improperly gave short shrift to the fact that none of the three occupants in the confined space of the car acknowledged ownership of the drugs, which provided probable cause to believe that a crime—possession of cocaine—was committed in the presence of the officers by at least one, and perhaps all three, of the car's occupants. Contrary to the implication of the Maryland court's ruling, this Court's precedent on probable cause did not require the officers—faced with a situation where a crime has been committed in the officers' presence by at least one of the occupants of a private passenger car—to simply walk away.

This Court's standard for probable cause permitted the arrest of Pringle and the other occupants of the car in this case. Because Pringle's arrest without a warrant comported with the Fourth Amendment, the lower court's contrary decision should be reversed.

I. Because Probable Cause To Arrest Does Not Require Proof Sufficient To Sustain A Conviction, There Is Probable Cause To Arrest All Three Occupants Of A Car In Which Drugs Are Found In The Passenger Compartment.

While the Maryland court apparently would not quibble with the proposition that the drugs found behind the back armrest of the car in which Pringle and his companions were traveling provided probable cause to believe that "...an offense has been or [was] being committed" in the officer's presence, *Draper v. United States*, 358 U.S. at 313, *citing Carroll v. United States*, 267 U.S. at 162, Pet. App. at 18a, the Maryland court decided that the police did not have

probable cause to arrest Pringle, the front seat passenger, for drug possession. Because the other two occupants of the car were released after Pringle confessed, the Maryland court had no occasion to decide whether *any* of the three in the car could be properly arrested, but that court's reasoning makes it doubtful that any arrests could have been made consistent with that court's view of the law.

Whether single or multiple suspects are involved, probable cause to arrest does not require proof sufficient to establish guilt, *Brinegar v. United States*, 338 U.S. at 173, but instead requires an evaluation of the totality of the circumstances to determine whether there is a "probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. at 243 n. 13. Because probable cause requires "only the probability, not a prima facie showing of criminal activity," *Illinois v. Gates*, 462 U.S. at 235, this Court's cases do not require that police narrow a list of likely suspects for a crime down to one in order to make an arrest.[1]

In *Chambers v. Maroney*, 399 U.S. 42, 44-47 (1970), for example, the Court concluded that there was probable cause to arrest all four occupants of a car seen circling a gas station and then speeding away, even when the robbery was committed by two men. Thus, the automobile context differs from, for example, the scenario in *Ybarra v. Illinois*, 444 U.S. 85, which held that a search warrant for a tavern and the tavern owner for evidence of possession of a controlled

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[1] The English common law similarly required some basis for suspecting a particular individual but did not require that one individual be singled out from all other possible suspects. *See* Grano, "Probable Cause and Common Sense: a Reply to the Critics of Illinois v. Gates," 17 *Journal of Law Reform* 465, 480-81 (1984), *citing* 1 M. Hale, The History of the Pleas of the Crown 580, 582-83, 588 (1736) *and* 2 M. Hale, *supra*, 78-79, 80-90, 91, 101, 103, 113, 150.

substance did not justify the search of the tavern's patrons and the consequent discovery of heroin in a packet in a patron's (Ybarra's) pants pocket. 444 U.S. at 90-91. Searching everyone in a restaurant, bar, or even a public bus or other common carrier is a far cry from the arrest of three occupants of a private passenger car for possession of drugs found in the back seat.

In contrast to the unreasonable result reached by the Maryland court in this case, the Model Code of Pre-Arraignment Procedure, Section 120.1 commentary, at 295 (Official Draft 1975), illustrates the correct view of probable cause to arrest in a multiple-suspect situation. The Model Code commentary concludes that an officer could properly arrest two persons present at the scene of a murder, found standing over the dead body, on the basis that the officer has a reasonable basis to believe that either of the two of them killed the dead man. *Id.*, *citing* Restatement of Torts (Second), Section 119, illustration 2 (1965). *Accord*, 2 LaFave, Search and Seizure Section 3.2(e), at 64 (3d Ed. 1996). The Maryland court's approach to the multiple-suspect situation in this case would invalidate the arrests of the two murder suspects in the Model Code's illustration.

Under the Maryland court's ruling in this case, it is questionable whether *any* of the three occupants of the car in which Pringle was traveling could be lawfully arrested for possession of the drugs, despite the "substantial chance", *Illinois v. Gates*, 462 U.S. at 243 n. 13, that each was involved in the criminal possession of cocaine. The Maryland decision below effectively requires police officers in the field to analyze probable cause in multiple suspect situations under the standard that a "legal technician" such as a prosecutor would use, *cf. Brinegar v. United States*, 338 U.S. at 175, with the likely result of less effective crime prevention and prosecution. Contrary to the Maryland court's decision, where it is evident that a crime has been committed

and at least one of the occupants of the car is the wrongdoer, probable cause exists to arrest all three of the occupants of the car.

II. Probable Cause Is Supported Here By The Judgment That Passengers In A Private Car Are Often Engaged In A Common Enterprise With The Driver, And By The Principle That Occupants Of A Car Jointly And Constructively Possess Contraband Kept In The Passenger Compartment.

Concluding that discovery of cocaine in the back armrest of the car was insufficient to establish probable cause for a front seat passenger's arrest, the court below required "additional facts . . . that would tend to establish [Pringle's] knowledge and dominion or control over the drugs", Pet. App. at 21a, to justify Pringle's arrest. In doing so, the Maryland court failed to recognize at least two important factors that a reasonable officer's assessment of probable cause to arrest legitimately includes: (1) the commonsense conclusion that car passengers will be engaged in a common enterprise with the driver, *Wyoming v. Houghton*, 526 U.S. at 304-05, and will often have a shared interest in concealing evidence of wrongdoing; and (2) the reasonable judgment that drugs kept behind an armrest in the passenger compartment of a car are within the dominion and control of all occupants of the car, providing probable cause to arrest all of the occupants for joint and constructive possession of the contraband.

In *Wyoming v. Houghton*, this Court upheld the search of containers in a passenger's purse found in the back seat of a lawfully stopped car where the officers had probable cause to believe the car contained contraband. The Court observed that a car passenger, unlike an "unwitting tavern patron" where a search warrant is executed, *cf. Ybarra v. Illinois*, 444 U.S. 85, "will often be engaged in a common enterprise with

the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." 526 U.S. at 304-05, *citing Maryland v. Wilson*, 519 U.S. at 413-14 (permitting police to order the passengers, as well as the driver, out of a lawfully stopped vehicle to prevent harm to the officer by passengers).

Other decisions of this Court recognize the validity of this straightforward observation. In *Ulster County*, 442 U.S. 140, this Court rejected a Due Process clause challenge to the application of a statutory presumption that the presence in an automobile of any firearm is evidence of its possession by all persons occupying the automobile at the time the item is found. The Court thus upheld the convictions of the car's adult occupants—in a case where two loaded handguns were found protruding from the (juvenile) front seat passenger's handbag and all four occupants of the car were convicted of possession of the firearms. *Id.*; *cf. Chambers v. Maroney*, 399 U.S. at 44-47 (finding probable cause to arrest all four occupants of a car seen circling a gas station and then speeding away, even when the robbery was committed by two men). And in *Carroll v. United States*, 267 U.S. at 160-61, the Court confirmed that there was probable cause to stop and search a car for contraband liquor where the two occupants were in the same vehicle as when they previously tried to sell whiskey to the officers.

The presence of evident contraband such as drugs or illegal weapons in the passenger compartment of a car strengthens the inference that passengers in the car are traveling together for a common purpose or are engaged in a common activity with the driver. In *Ulster County*, 442 U.S. at 163-65, for example, the Court concluded that it was not unreasonable for the jury to infer that when the car was stopped for speeding, the three other occupants of the car anticipated the risk of a search and attempted to conceal the guns in the female defendant's purse on the front seat. And it is an unsurprising proposition that those engaging in serious

criminal activity rarely invite innocent bystanders to accompany them. *See, e.g., Ulster County*, 442 U.S. at 165, n.27 (*citing* Interim Report of Temporary State Commission to Evaluate the Drug Laws, N.Y. Leg. Doc. No. 10, p. 69 (1972)) ("We do not believe that persons transporting dealership quantities of contraband [in a car] are likely to go driving about with innocent friends or that they are likely to pick up strangers.") *Accord, United States v. Martinez-Molina*, 64 F.3d 719, 729 (1st Cir. 1995) ("We do not think that officers in the field are required to divorce themselves from reality or ignore the fact that 'criminals rarely welcome innocent persons as witnesses to serious crimes and rarely seek to perpetrate felonies before larger-than-necessary audiences.'") (citation omitted). If "legislative judgments such as [the one embodied in the statute in the *Ulster County* case] deserve respect" in assessing the constitutionality of statutory evidentiary presumptions, 442 U.S. at 165, n. 27, then certainly police officers may rely upon similar judgments in determining whether there is probable cause to arrest occupants of a car in which drugs are found.

As this Court recognized in *Wyoming v. Houghton*, 526 U.S. at 304-05, an inference of "common enterprise" among a car's driver and passengers does not apply to persons frequenting a public tavern or restaurant where a search warrant is executed. Nor would it hold true for passengers on a public bus or other common carrier, or a movie theater. For this reason, the concern expressed by the court below—that a ruling upholding Pringle's arrest would permit the police to place everyone in a bus or movie theater under arrest until some person confessed to possession of the contraband, Pet. App. at 21a, n.12—is not well-founded.

A police officer reasonably could infer "joint and constructive possession" of the drugs found in the passenger compartment of the car by all of the occupants of the car. *See* Md. Code Ann. Crim. Law. Art., Section 5-101(u) (2002); *cf. National Safe Deposit Co. v. Stead*, 232 U.S. 58, 67 (1914)

(noting that actual possession and constructive possession may "shade into one another"); *United States v. Martinez*, 588 F.2d 495, 498 (5th Cir. 1979) (constructive possession requires the ability to reduce an object to actual possession). An officer reasonably concludes that drugs in the passenger compartment are accessible to any occupant of a car, and therefore that all of the occupants exercise "dominion or control" over the drugs.

This Court confirmed the reasonableness of that conclusion in *Ulster County*, 442 U.S. at 164-65, noting that where guns were lying on the floor or seat of the car in plain view of the other occupants of the car, "... it is surely rational to infer that each of the respondents was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons." This Court applied a similar principle in *New York v. Belton*, 453 U.S. at 460, permitting a police officer who made a lawful custodial arrest of the occupant of the automobile to search the passenger compartment of that automobile incident to the arrest, and any open or closed containers in that compartment. The Court in *Belton* based that rule in part on "... the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within "the area into which an arrestee [occupant] might reach in order to grab a weapon or evidentiary [item]." 453 U.S. at 460, *citing Chimel v. California*, 395 U.S. 752, 763 (1969) (permitting a search without a warrant of the area from within which an arrestee might gain possession of a weapon or destructible evidence). The Court's observation in *Belton*—that items in the passenger compartment of a car generally are within reach of an occupant of the car—underscores the reasonableness of the police officers' arrest of Pringle and his companions for joint and constructive possession of the drugs in the car.

To require, as the Maryland court did, further evidence of "knowledge" of the drugs in the passenger compartment by one of the suspects at the probable-cause-to-arrest stage, Pet. App. at 21a, where all of the car's occupants refused to respond to the officer's questions about who owned the drugs, could well preclude *any* arrest for possession of illegal contraband in such a situation. Reasonable inferences such as the ones that the police made here regarding criminal possession of drugs by the occupants of the car are not foreclosed at the probable-cause-to-arrest stage simply because the suspects refuse to talk to the officer (or give him evasive or misleading answers). *Cf. Wyoming v. Houghton*, 526 U.S. at 298 (defendant lied about identification to avoid being found to be owner of drugs in her purse).

The Maryland court's ruling below undercuts the practical, commonsense conclusions that police officers in multiple suspect cases such as this one reasonably make. *See, e.g., United States v. Buckner*, 179 F.3d at 838-39 (probable cause to arrest both occupants of car in which drugs were found); *Fernandez v. Perez*, 937 F.2d at 370 (probable cause to arrest all three occupants of car because absent explanation to the contrary, the metal-piercing bullets found in the car were the property of one, two or all three of the occupants); *Braxton v. State*, 350 So.2d 753 (Ala. 1977) (probable cause to arrest passenger when gun found hidden in close proximity); *Smith v. State*, 363 So. 2d 21 (Fla. 1978) (probable cause to arrest passenger when drugs found on seat between passenger and driver); *People v. Zeller*, 51 Ill. App. 3d 935, 367 N.E.2d 488 (1977) (probable cause to arrest rear seat passenger when open containers of alcohol found in front seat); *State v. Horton*, 625 N.W.2d 362 (Iowa), *cert. denied*, 534 U.S. 928 (2001) (probable cause to arrest both occupants of car for possession of marijuana); *State v. Hanson*, 588 N.W. 2d 885 (S.D.), *cert. denied*, 528 U.S. 835 (1999) (probable cause to arrest front seat passenger for possession of marijuana based on marijuana leaf and seed and pipe with

marijuana residue found in back seat of car); *State v. Mitchell*, 482 N.W.2d 364, 368-69 (Wisc. 1992) (an officer had probable cause to arrest both occupants of a vehicle in which the officer detected the presence of marijuana odor and smoke); *People v. Vermouth*, 20 Cal. App. 3d 746, 98 Cal. Rptr. 65, 71 (1971) (an officer properly arrested a car's driver and passenger where the circumstances suggested that both were in possession of weapons and cash found in the vehicle). The rule applied by the court below—which seemingly would render illegal the arrests upheld in the cases cited above—would significantly and adversely affect law enforcement efforts throughout the country.

III. Probable Cause To Arrest All Of A Car's Occupants Exists When A Crime, Such As Drug Possession, Has Been Committed Within the Passenger Compartment Of A Car, And No Evidence Limits The Suspects To One Individual.

Although the Maryland court majority in its ruling below cited one of this Court's cases, *United States v. Di Re*, 332 U.S. 581, in holding that the arrest of Pringle was without probable cause, Pet. App. at 20a, that case in no way compels the result that the Maryland court reached. While it is true that in *United States v. Di Re*, the Court rejected the argument that Di Re could be arrested simply because he was present in a car in which the driver alone had just committed an illegal transaction with an undercover informant, the facts in that case are easily distinguishable from the facts before the Court here.

In *Di Re*, a government informant told police that the driver of the car in which he was traveling had given him the counterfeit ration coupons, but the informant said nothing to incriminate Di Re, who was the front seat passenger. Additionally, transfer of the paper ration coupons did not in and of itself connote criminal activity. 332 U.S. at 593. *See also Henry v. United States*, 361 U.S. 98, 103 (1959)

(defendant's riding in a car with person suspected of some implication in some interstate shipments, stopping in an alley and picking up packages, were all acts that were outwardly innocent and did not establish probable cause to arrest defendant for theft of interstate shipments). This Court concluded that there was no probable cause to arrest Di Re, given the evidence clearly implicating the driver (and the government informant), but not Di Re, in the criminal transaction.

Unlike Di Re, Pringle was not simply associating with someone independently suspected of criminal activity, but was an occupant, with two others, in the passenger compartment of a car in which drugs and a roll of cash were accessible to all of the car's occupants. *Cf. Sibron v. New York*, 392 U.S. 40, 62-63 (1968) (holding search of defendant's person illegal and not incident to lawful arrest, where only information officer had about defendant was that he had seen defendant talking to several known narcotics addicts over a period of eight hours). In this case, five baggies of cocaine were stashed behind an upright armrest in the back seat of the car, within reach of all of the occupants of the car, but all three occupants denied ownership of the drugs. The not-so-innocent-looking drugs in the passenger compartment, and the claim by all occupants of the car that they were not the owners of the drugs, easily differentiate this case from *Di Re*, as does the lack of any informant's tip or other information pointing to one particular suspect at the scene of the crime, but no other.

In *Di Re*, this Court observed that "the argument that one who accompanies a criminal to a crime rendezvous cannot be assumed to be a bystander, *forceful enough in some circumstances*, is farfetched . . . where the alleged substantive crime is one which does not necessarily involve any act visibly criminal." 332 U.S. at 593 (emphasis supplied). Here, unlike in *Di Re*, the police officers' inference that Pringle and his companions jointly possessed the drugs

located in the passenger compartment of the car in which they were traveling was indeed "forceful" and not "far-fetched." Reasonable police officers were entitled under this Court's probable cause cases to make that inference, and to arrest Pringle and the other occupants of the car. Thus, *Di Re* is fully distinguishable from this case.

Further, even if *Di Re* at one time may have implied that police generally are unjustified in inferring a common purpose among occupants of a private passenger car, such an implication has been severely eroded, if not outright eliminated, by this Court's reasoning in *Wyoming v. Houghton*, 526 U.S. at 304-05, and *Ulster County*, 442 U.S. at 163-65. Passengers in a car on a public highway have a reduced expectation of privacy, *Wyoming v. Houghton*, 526 U.S. at 303-04, as this Court recognized in upholding a search of a passenger's belongings when there is reason to believe contraband or evidence of criminal wrongdoing is in the car. Unlike a patron in a restaurant or bar, *cf. Ybarra v. Illinois*, 444 U.S. 85, or a passenger on a common carrier, passengers in a private car likely share some common purpose in traveling with the driver. *Wyoming v. Houghton*, 526 U.S. at 304-05. And, if it is "entirely rational," in the context of a criminal trial, for a statutory presumption to permit an inference of illegal possession of a gun in the car by all the occupants, *Ulster County*, 442 U.S. at 163, then it cannot be that police officers are foreclosed from relying upon a similar inference in arresting for drug possession all occupants of a car in which the drugs are found in the passenger compartment.

For all of the foregoing reasons, neither *Di Re* nor the Court's other probable cause cases support the result reached in this case by the Maryland court. The Maryland court's decision should be reversed.

CONCLUSION

For the foregoing reasons, the *amici* States respectfully urge the Court to reverse the lower-court decision.

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IN THE

Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

vs.

JOSEPH JERMAINE PRINGLE,

Respondent.

On Writ of Certiorari to the Court of Appeals of Maryland

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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37pp

QUESTIONS PRESENTED

1. Does the Fourth Amendment probable cause standard allow an officer who knows that a crime has been committed by one of a small group of known suspects to arrest all of the suspects and continue investigating the crime?

2. Were the arrests in this case supported by probable cause?

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IN THE

Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

vs.

JOSEPH JERMAINE PRINGLE.

Respondent.

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

This case addresses the standard for probable cause to arrest. The Maryland Court of Appeals' myopic standard asks the wrong questions and gives the wrong answers when addressing whether police can arrest multiple suspects for a

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1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

single-suspect crime. Arrests are not the end of the investigation. Often an arrest can greatly aid the police in solving crimes with more than one suspect. Where there is more than one suspect for a crime, and further investigation is needed, then an officer should be allowed to arrest all of the suspects. The Maryland Court of Appeals' restrictive reading of the Fourth Amendment would prevent this. This needless hamstringing of police investigation is contrary to the interest of public safety, and therefore CJLF has an interest in this case.

SUMMARY OF FACTS AND CASE

On August 7, 1999, at about 3:16 a.m., Officer Jeffrey Snyder of the Baltimore County Police Department stopped a vehicle for speeding and because the driver was not wearing a seat belt. See *Pringle* v. *State*, 805 A. 2d 1016, 1019 (Md. 2002); J. A. 4-5. The driver and owner of the vehicle was Donte Carlos Partlow, Otis Calvin Smith was the back seat passenger, and the defendant, Joseph Jermaine Pringle, was the front seat passenger. See *Pringle*, *supra*, at 1019. When Partlow opened the glove compartment to get his registration, Officer Snyder noticed that it contained a large roll of cash. See *ibid.* He said nothing about this, but went back to his patrol car to check Partlow's license and registration for outstanding violations. Finding none, Officer Snyder returned, had Partlow exit the car, and issued a verbal warning. See *ibid.*

Another patrol car arrived at this time and Officer Snyder asked Partlow if he had any drugs or weapons in the car. See *ibid.* Partlow responded that he did not. Officer Snyder then obtained Partlow's permission to search the vehicle. See *ibid.* The three occupants were seated at the curb during the search. See *ibid.*

The search revealed $763.00 in the glove compartment and five baggies containing what appeared to be cocaine concealed

behind the armrest in the backseat. See *ibid.*[2] Officer Snyder then questioned the three about the money and drugs, telling them that he would arrest all three if none of them admitted to ownership. See *ibid.* When none of the three offered any information, they were all placed under arrest and taken to the police station. See *ibid.* Sometime between 4:00 and 5:00 a.m., Officer Snyder met with Pringle, and after obtaining a *Miranda* v. *Arizona*, 384 U. S. 436 (1966) waiver, Pringle confessed. See 805 A. 2d, at 1019-1020.

The trial court denied the defendant's suppression motion and a jury convicted him of possession with intent to distribute cocaine and possession of cocaine. See *id.*, at 1020. The Maryland Court of Special Appeals affirmed the conviction. See *ibid.* The Maryland Court of Appeals reversed the conviction. It held that Officer Snyder lacked probable cause to arrest the defendant because at the time of the arrest he had no evidence that the defendant exercised dominion or control over the cocaine, an element of the crime of cocaine possession. See *id.*, at 1027. This made the arrest illegal and invalidated the confession as fruit of the illegal arrest. See *id.*, at 1028. This Court granted certiorari on March 24, 2003.

SUMMARY OF ARGUMENT

The Maryland Court of Appeals incorrectly focused its probable cause analysis on the elements of the crime of drug possession. It is unnecessary to have proof of every element of a crime before making an arrest. For example, this Court does not require the officer to have a prima facie case before making an arrest. It has also upheld an arrest where evidence of one

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2. "At the time of the stop, the armrest was in the upright position and flat against the seat. When Officer Snyder pulled down the armrest he found the drugs, which had been placed between the armrest and the back seat of the car and, absent the pulling down of the armrest, were not visible." *Id.*, at 1019, n. 2.

element of the crime was missing. The real issue in this case is whether probable cause for arrest must focus on a single suspect. The correct answer is "no."

The relaxed standard of probable cause is inconsistent with requiring the arresting police to narrow their suspicion to a single suspect. The common law generally required some level of suspicion to justify a search or seizure. While it may seem low by modern standards, early probable cause was far from toothless. The hue and cry demonstrates that the common law permitted arresting multiple suspects for one crime. The Fourth Amendment was not a reaction to the level of suspicion required by the common law, but rather the suspicionless general warrant searches imposed against the colonies. The common law's definition of probable cause crossed the Atlantic, as shown by statutes from the First Congress and this Court's early probable cause decisions.

While probable cause has moved from its common law roots, it has been a short journey. Starting with *Brinegar* v. *United States*, this Court has enunciated a practical, flexible standard that accommodates the reasonable mistakes of police officers. While this standard cannot be defined precisely, it is possible to determine that probable cause requires less than a preponderance of the evidence. The combination of reasonable mistake and the less than a preponderance standard together strongly favor allowing multiple suspects to be arrested for a single-suspect crime.

This is consistent with the investigative function of arrests. An arrest is often the beginning of the investigation. A host of investigative techniques, such as custodial interrogation, identification by the victim, fingerprinting, and DNA testing, are much easier to employ after an arrest. The importance of continued investigation played an important role in the decision of many authors and noted scholars to reject a preponderance standard for probable cause. Where further investigation would be useful, logic argues strongly in favor of allowing the arrest of multiple suspects for a crime.

No decisions support a bright-line rule against multiple-suspect arrests. *Johnson* v. *United States* and *Wong Sun* v. *United States* both involved arrests with minimal suspicion and an unknown number of potential suspects, and are thus distinguished from the present case. *Mallory* v. *United States* is irrelevant because it did not address probable cause. Since probable cause is not susceptible to bright-line rules, none of these cases can support a categorical exemption against multiple-suspect arrests.

There was probable cause to arrest all three occupants of the car. While hypotheticals addressing multi-suspect arrests only discuss arresting two suspects, this number is too low. The fact that the police narrowed the universe of suspects to these three is itself a significant accomplishment that strongly supports probable cause.

The placement of the drugs behind the rear seat armrest and money in the car glove compartment, while strongly implicating at least one of the occupants, did not point to any one occupant. The location of the drugs and money also strongly suggests that more than one occupant knew about the drugs. Any claim that innocents were arrested along with the guilty must be read in this context. The Maryland Court of Appeals' claim that upholding the arrests in this case would sanction arrests involving vastly more suspects is spurious because this Court's decisions require each probable cause case to be decided on its own unique facts.

ARGUMENT

I. The Maryland Court of Appeals incorrectly focused its probable cause analysis on the elements of the crime of drug possession.

The arresting officer in this case was confronted with a mystery. Officer Snyder lawfully found over $700.00 in cash in the glove compartment and what was very likely to be

cocaine hidden between the backseat armrest and the backseat of the car. See *Pringle* v. *State*, 805 A. 2d 1016, 1019 (Md. 2002). The mystery was which or how many of the three occupants of the car was responsible for the drugs. He had three options: arrest all three and try to sort it out at the police station, unfairly arrest only some of them, or let them all go and allow the crime to go unsolved. His choice of the first option allowed him to solve the crime when the defendant confessed at the police station. See *id.*, at 1019-1020.

The Court of Appeals' analysis focused on the elements of the crime of drug possession. See *id.*, at 1021-1026. One element of the crime of drug possession is the exercise of " 'actual or constructive dominion or control,' " over the narcotics. See *id.*, at 1021. The Maryland high court concluded that because there was no evidence that the defendant exercised such control over the cocaine there was no probable cause to arrest him. See *id.*, at 1027.

This is the wrong approach to arrests involving multiple suspects. The notion that an officer must have evidence of every element of a crime before making an arrest is inconsistent with precedent. There are "established propositions that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause." *Spinelli* v. *United States*, 393 U. S. 410, 419 (1969), overruled on other grounds in *Illinois* v. *Gates*, 462 U. S. 213, 238 (1983). Failure to prove a particular element at this embryonic stage of the criminal process should not necessarily be fatal to continued investigation through a search or seizure. In the context of the criminal trial, a prima facie case is where the prosecution presents enough evidence to overcome a motion to acquit. See *Martin* v. *Ohio*, 480 U. S. 228, 234 (1987). A prima facie case is less than proof beyond a reasonable doubt, as the defendant can still raise a reasonable doubt about any element of the offense. See *ibid.* While requiring less than proof beyond a reasonable doubt, a prima facie case still must have some proof of every element of the offense. The statements in *Spinelli* and *Gates* at

least contemplate that a lack of evidence of one element does not necessarily defeat probable cause to arrest.

Adams v. *Williams*, 407 U. S. 143 (1972) provides further demonstration. Police Sergeant Connally was patrolling a high-crime area in Bridgeport, Connecticut, one night. At 2:15 a.m. someone known to him "approached his cruiser and informed him that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist." *Id.*, at 144-145. Sergeant Connally called for assistance and approached the vehicle. *Id.*, at 145. He tapped on the car window and asked the occupant, Williams, to open the door. *Ibid.* Williams instead rolled down the window and "the sergeant reached into the car and removed a fully loaded revolver from Williams' waistband." *Ibid.* It was precisely in the place indicated by the informant. Sergeant Connally then arrested Williams for unlawful possession of a firearm. *Ibid.* The search incident to the arrest uncovered substantial amounts of heroin on Williams and in the car. *Ibid.* While the Connecticut Supreme Court upheld the search, the Second Circuit Court of Appeals granted habeas relief in an en banc decision, holding that the evidence was obtained by an unlawful search. See *id.*, at 144.

This Court reversed. First, it found that Sergeant Connally's decision to investigate the tip and to take the gun from Williams were valid under *Terry* v. *Ohio*, 392 U. S. 1, 30 (1968). See 407 U. S., at 148. The subsequent search was also valid because it was incident to a lawful arrest.

> "In the present case the policeman found Williams in possession of a gun in precisely the place predicted by the informant. This tended to corroborate the reliability of the informant's further report of narcotics and, together with the surrounding circumstances, certainly suggested no lawful explanation for possession of the gun. Probable cause does not require the same type of *specific evidence of each element* of the offense as would be needed to support a conviction." *Id.*, at 148-149 (emphasis added).

As Justice Douglas' dissent noted, carrying a pistol is not a crime in Connecticut if the individual has a permit. See *id.*, at 149 (Douglas, J., dissenting). Sergeant Connally did not discern whether Williams had a permit when he made the arrest. The absence of a "lawful explanation" for the handgun was enough to provide the probable cause for the arrest. The fact that an element of the crime of illegal possession was missing from Sergeant Connally's calculus did not negate probable cause.

Even though the Maryland Court of Appeals did not address *Adams*, it is not necessary to determine the precise relationship between the elements of a crime and probable cause to arrest. In this case, there was evidence of all the elements of drug possession. The cocaine did not get into the car on its own. It was not hidden in a comparatively remote spot such as in the trunk, see *California* v. *Acevedo*, 500 U. S. 565, 567 (1991), or in an air vent under the dashboard. See *Michigan* v. *Thomas*, 458 U. S. 259, 260 (1982) (*per curiam*). The armrest in the middle of the rear seat was easily accessible to any of the occupants of the vehicle, making them by far the most likely suspects. The question in this case is not whether the crime of drug possession was committed by one of the occupants, but rather who among them committed it.

The Maryland Court of Appeals' focus on the elements of drug possession misses the key question in this case. What this case really revolves around is whether probable cause for arrest must focus on a single suspect. The correct answer is "no." Confused by its wayward analysis, the Maryland Court of Appeals came to the wrong conclusion. "In a specific case, we apply the elements of the alleged offense to the facts and circumstances of that case to determine whether the police officer had probable cause to make a warrantless arrest of a *particular* individual for that specific offense." *Pringle*, 805 A. 2d, at 1027 (emphasis added). In the right circumstances, the police can arrest multiple suspects and use other investiga-

tive techniques such as custodial interrogation in order to solve crimes. These circumstances are found in this case.

II. Probable cause's relaxed standard does not require police to narrow their suspicion to a single suspect before making an arrest.

A. The Relaxed Standard.

Analysis of multiple suspect arrests begins by examining the probable cause standard. Both history and modern practice show it to be relatively relaxed and flexible. This standard readily accommodates the effective policing found in this case.

1. Common law roots.

The common law typically required some level of suspicion to support an arrest or search. See Grano, Probable Cause and Common Sense: A Reply to the Critics of *Illinois* v. *Gates*, 17 U. Mich. J. L. Ref. 465, 479-480 (1984); 4 W. Blackstone, Commentaries 287-289 (1st ed. 1769). For a time in England, suspicionless general warrants were used primarily as a means to stifle the press. See 1 W. LaFave, Search and Seizure § 1.1(a), p. 3 (3d ed. 1996). While these were resisted in both Parliament and the courts, see *id.*, at 3-4, suspicionless searches were applied to the colonies in the form of the writ of assistance. See *id.*, at 4; Grano, *supra*, at 479. The Fourth Amendment grew out of dissatisfaction with these practices. See *Henry* v. *United States*, 361 U. S. 98, 100-101 (1959); Grano, *supra*, at 478-479.

The level of suspicion needed to justify a search or an arrest at the common law had several interchangeable names. See 2 M. Hale, The History of the Pleas of the Crown *79 (1736) ("suspicion"); *id.*, at *78 ("probably suspected"); *id.*, at *79 ("reasonableness of the suspicion"); *id.*, at *89 ("probable grounds"). Whatever term was used, the required level of suspicion for arrests or searches was quite low. One case

upheld a watchman's arrest at ten o'clock one night on a London street because the plaintiff failed to account for a bundle he carried. See *Lawrence* v. *Hedger*, 128 Eng. Rep. 6, 6 (C. P. 1810). In another, a constable arrested a man resting by a bridge with a saddle and bridle on his back. The man told the constable that he had just sold his horse at the market, but the constable believed that the man had or was about to steal a horse. This was enough justification for the arrest. See *Beckwith* v. *Philby*, 108 Eng. Rep. 585, 586 (K. B. 1827). Similar standards applied to searches. See Grano, 17 U. Mich. J. L. Ref., at 487-488. The common law did not require the constable to single out one individual from a group of suspects before making an arrest. See *id.*, at 480-481. A particularly vivid example of this is the hue and cry. Under this rule, once a felony was reported to the constable, he "had an obligation to raise a hue and cry so that a search for the offender could be conducted from town to town." *Id.*, at 482. Where the report did not specify the offender's identity, other types of suspicion could justify arrests.

> "[A]ll that can be done is for those that pursue the *hue* and *cry*, to take such persons as they have probable cause to suspect; as for instance, such persons as are vagrants, that cannot give an account where they live, whence they are, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they had been, and the like." 2 Hale, *supra*, at *103 (emphasis in original).

Common law probable cause was not meaningless. According to Hale, a robbery complaint would not support a general warrant "to apprehend all persons suspected." See *id.*, at *112. When a constable secured a warrant, it was "the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion." 4 Blackstone, at 288. While it may have been more lenient than modern standards, the common law did restrain the constable.

There is good evidence that the First Congress "shared the common law view that probable cause required only a focused suspicion." Grano, 17 U. Mich. J. L. Ref., at 488. For example, it passed a statute permitting officials "to enter [and search] any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise subject to duty shall be concealed." Act of July 31, 1789, § 24, 1 Stat. 29, 43.[3] A search warrant was required for the entry and search of houses or other buildings and could only be obtained when they had "cause to suspect" that such goods were present. See *ibid.* Acts passed in 1790 and 1799 used identical language. See Act of March 2, 1799, § 68, 1 Stat. 627, 677-678; Act of August 4, 1790, § 48, 1 Stat. 145, 170. "Congress apparently saw no difference between the probable cause requirement in the fourth amendment and the 'reason to suspect' and 'cause to suspect' standards employed in these statutes." Grano, *supra*, at 489. "An Act 'passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, . . . is contemporaneous and weighty evidence of its true meaning.' " *Marsh* v. *Chambers*, 463 U. S. 783, 790 (1983) (quoting *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 297 (1988)) If this is true of the original Constitution, it is even more true of the Bill of Rights, which was drafted and prepared by the first Congress itself. See *Santa Fe Independent School Dist.* v. *Doe*, 530 U. S. 290, 318 (2000) (Rehnquist, J., dissenting).

This Court's earliest probable cause decisions took a similar approach. The first probable cause cases did not address searches or seizures. A 1799 forfeiture statute required the plaintiff claiming the seized goods to carry the burden of proof that they were wrongfully seized once the government proved "probable cause" for its action. See Act of March 2, 1799, § 71, 1 Stat. 627, 678. A plaintiff filing under this Act asserted that

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3. Congress submitted the Bill of Rights to the states less than two months later. See 1 Stat. 97 (1789).

the government had to make a prima facie case of forfeiture. This Court disagreed, as Chief Justice Marshall wrote:

> "It may be added, that the term 'probable cause,' according to its usual acceptation, means less than evidence which would justify condemnation; and in all cases of seizure, has a fixed and well-known meaning. It imports a seizure *made under circumstances which warrant suspicion.* In this, its legal sense, the court must understand the term to have been used by congress." *Locke* v. *United States*, 11 U. S. (7 Cranch) 339, 348 (1813) (emphasis added).

Wheeler v. *Nesbitt*, 65 U. S. (24 How.) 544 (1861) is another early case addressing probable cause. Here the defendants alleged that the plaintiff stole four horses and secured a warrant for his arrest. The plaintiff, who lawfully owned the horses, was acquitted of the charge and brought a malicious prosecution suit against the defendants. See *id.*, at 546-547. As part of his case, the plaintiff attempted to prove "that the prosecution was groundless, and without any reasonable or probable cause . . . ." *Id.*, at 548. The opinion held that probable cause existed if the defendants had "reasonable grounds for believing" that the plaintiff committed the crime. See *id.*, at 550. *Wheeler* upheld the trial courts' instruction that probable cause "was the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." *Id.*, at 551-552.

2. The modern standard.

Probable cause changed little as it entered the early twentieth century. *Carroll* v. *United States*, 267 U. S. 132 (1925), famous for the automobile exception to the warrant requirement, also contained extensive probable cause analysis. Prohibition agents set up a liquor buy with the two defendants which failed when the two did not show up. See *id.*, at 134-135. More than two months later, the agents saw the defendants driving in the same car they had when the buy had been set up. See *id.*, at 135. This, along with the fact that they were coming from Canada, a known source of contraband alcohol, provided probable cause for the stop and search. See *id.*, at 160. This is consistent with the limited, suspicion-based view of probable cause found in the common law and this Court's early decisions. See Grano, *supra*, 17 U. Mich. J. L. Ref., at 492.

The modern standard for probable cause was set in *Brinegar* v. *United States*, 338 U. S. 160 (1949), a case which closely followed *Carroll*. See *id.*, at 170. The decision is most notable for its often-quoted description of probable cause:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved." *Id.*, at 175; see also *Massachusetts* v. *Upton*, 466 U. S. 727, 732 (1984) (*per curiam*); *Illinois* v. *Gates*, 462 U. S. 213, 231 (1983).

This Court also indicated that the standard for probable cause was higher than it was originally. After quoting with approval from Chief Justice Marshall's opinion in *Locke*, the *Brinegar* Court stated that "[s]ince Marshall's time, at any rate, it has come to mean more than bare suspicion . . . ." 338 U. S., at 175 (footnote omitted).[4] While probable cause is more than unadorned suspicion, *Brinegar* does not exact a strict standard.

Most importantly for this case, the *Brinegar* Court notes that probable cause accommodates errors by the police. "Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room

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4. This passage discounts the passage in *Locke* stating that probable cause " 'imports a seizure made under circumstances which warrant suspicion.' " *Id.*, at 175, n. 14 (quoting *Locke*, 11 U. S., at 348).

must be allowed for some mistakes on their part." *Id.*, at 176. While the mistake must be that which a reasonable officer would make, see *ibid.*, *Brinegar* accepts that officers must be allowed to make mistakes if public safety is to be maintained by appropriately aggressive law enforcement.

Probable cause is a compromise between public safety and privacy. "These long-prevailing standards seek to safeguard citizens from rash and unreasonable interference with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection." *Ibid.* This reflects the reasonableness that is "[t]he touchstone of the Fourth Amendment," see *United States* v. *Knights*, 534 U. S. 112, 118 (2001), in which the interests of privacy and public needs are balanced. See *id.*, at 118-119; *Wyoming* v. *Houghton*, 526 U. S. 295, 300 (1999).

The inherent balancing of the probable cause determination helps to explain why there is no precise standard for measuring it. See *Ornelas* v. *United States*, 517 U. S. 690, 695 (1996). A hard and fast rule could not deal with the endless factual situations presented by searches and seizures or enforce the compromise between privacy and public needs. A result of the flexible, undefined nature of probable cause is that it can be difficult to apply. See *Anderson* v. *Creighton*, 483 U. S. 635, 644 (1987). While it is not possible to say what probable cause precisely is, it is possible to say what it is not.

Probable cause does not require a preponderance of the evidence. "Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision" on the existence of probable cause. *Gates*, 462 U. S., at 235. The preponderance standard is inappropriate for probable cause not just because it is too precise, but also because it is too high. A standard this high would needlessly frustrate society's ability to investigate crime. See American Law Institute, Model Code of Pre-Arraignment Procedure, Commentary, 294-295 (Proposed

Draft 1975); 2 W. LaFave, Search and Seizure § 3.2(e), p. 65 (3d ed. 1996).

Gerstein v. *Pugh*, 420 U. S. 103 (1975) confronted whether a criminal defendant who has been arrested and held for trial is entitled to a judicial determination of probable cause for detention and whether that hearing must be adversarial. See *id.*, at 111. While the defendant was entitled to a hearing, see *id.*, at 119, it did not have to be adversarial. See *id.*, at 123. An important reason for this holding was the nature of probable cause.

> "The use of an informal procedure is justified not only by the lesser consequences of a probable cause determination but also by the nature of the determination itself. It does not require the fine resolution of conflicting evidence that a reasonable-doubt *or even a preponderance standard demands*, and credibility determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt." *Id.*, at 121 (emphasis added).

There are two possible explanations for this passage. The first is that the Court defined probable cause as less than a preponderance of evidence. The alternative is "that probable cause does not require 'the fine resolution of conflicting evidence,' because the hearing is generally held ex parte; thus there is no need for determinations regarding credibility." See Comment, Considering the Two-Tier Model of the Fourth Amendment, 31 Am. U. L. Rev. 85, 109 (1981). Since the reasoning behind the second interpretation is circular, see *ibid.*, the better argument is that this Court meant what it said in *Gerstein*. Probable cause, though incapable of precise definition, is less than a preponderance of evidence.

Recent decisions show that probable cause is still applied in a manner to accommodate legitimate police interests. While the factual nature of probable cause means that one probable cause finding is rarely a useful precedent for another, see *Ornelas*,

517 U. S., at 695, the cases reflect a general approach to probable cause that is relevant to the present case.

Brinegar's notion of reasonable mistake is relevant to modern probable cause analysis. In *Hill* v. *California*, 401 U. S. 797 (1971), officers had probable cause to arrest Hill and went to his apartment to make a warrantless arrest. *Id.*, at 799. The person who answered the door was not Hill, but matched Hill's physical description. See *ibid.* The man claimed that he was not Hill and produced identification indicating that he was named Miller, but the officers still arrested him. See *ibid.* The police were unimpressed and proceeded to search the apartment for " 'a couple of hours,' " and found evidence used to convict Hill. See *id.*, at 799-800. The fact that the officers were mistaken in the identity of the arrestee did not negate probable cause to arrest. See *id.*, at 802. The fact that the officers were "quite wrong," *id.*, at 804, did not render the arrest illegal, as "sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment . . . ." *Ibid.* An officer's judgment does not have to be correct, it must only be reasonable. See *Illinois* v. *Rodriguez*, 497 U. S. 177, 184 (1990).

Accommodation of reasonable mistake is key to a proper understanding of multiple-suspect arrests. The argument against such arrests is that they sweep too broadly, arresting the innocent along with the guilty. This is the essence of the objection to the arrest raised by the Maryland Court of Appeals. Because Officer Snyder had no evidence of Pringle exercising dominion and control over the drugs, the argument goes, see *Pringle* v. *State*, 805 A. 2d 1016, 1027 (Md. 2002), he arrested an "innocent" man. The reasonable mistake doctrine of *Brinegar* and subsequent decisions refutes this claim. While at some point the number of potentially innocent suspects will be too high for probable cause to sanction, that decision must be made on a case-by-case basis. The fact that an officer arrests both the innocent and guilty when arresting multiple suspects does not invalidate the arrest if the "mistakes" were reasonable.

Another example of probable cause's flexibility is *Sibron* v. *New York*, 392 U. S. 40 (1968), a companion case to *Terry* v. *Ohio*, 392 U. S. 1 (1968). Off-duty Officer Lasky heard a noise outside the door to his apartment. After taking a telephone call, he looked through the peephole and "saw 'two men tiptoeing out of the alcove toward the stairway.' " *Sibron*, *supra*, at 48. He called the police and put on civilian clothes and his service revolver. See *ibid.* He returned to the peephole and "saw 'a tall man tiptoeing away from the alcove and followed by this shorter man' . . . ." *Ibid.* Believing the two strangers to be burglars, Officer Lasky opened the door, entered the hallway, and loudly slammed the door. *Id.*, at 48-49. The two fled down the stairs and Lasky pursued, catching Peters, whom he patted down, finding burglary tools. See *id.*, at 49. Peters was convicted of possessing burglary tools. See *id.*, at 44.

This Court held that the tools were properly seized, finding that by the time Officer Lasky caught up with Peters, there was probable cause to arrest him. See *id.*, at 66. The strange noises, the fact that the two were strangers, the furtive tiptoeing, and the flight were deemed to be the strongest grounds for arrest "short of actual eyewitness observation of criminal activity." See *ibid.*

Although this conclusion is correct, it should be understood in the context of the innocent explanations for Peters' actions, and the incomplete information possessed by Officer Lasky. While flight from uniformed police is certainly suspicious, see *Illinois* v. *Wardlow*, 528 U. S. 119, 124 (2000), Officer Lasky was in civilian clothes and armed when Peters fled from him. "[F]light at the approach of a gun-carrying stranger . . . is hardly indicative of *mens rea*." *Sibron*, 392 U. S., at 75 (Harlan, J., dissenting). The majority's conclusion to the contrary, see *id.*, at 66, was correct because Officer Lasky only needed to satisfy the probable cause standard. Even though there was an innocent explanation for the suspect's flight, this did not prevent Officer Lasky from arresting Peters so that he might

prevent a crime from being committed and further investigate the activity.

Officer Lasky had less information at the time of arrest than would seem to satisfy the Maryland Court of Appeals. As the majority opinion implicitly notes, Officer Lasky did not see a crime being committed. See *ibid.* ("short of actual eyewitness observation of criminal activity"). The crime of possession of burglary tools could not be discovered before the arrest and frisk. Although he had an incomplete picture of what the two had done and were up to, this Court's definition of probable cause allowed Officer Lasky to make an arrest so that he could investigate further.

There are other examples of the flexibility and comparative lenience of probable cause when an officer is confronted with uncertain information. *Brinegar* is one example. The fact that one of the defendants had previously been arrested for transporting liquor, had a reputation for transporting it, and was in an automobile about to enter a dry state, see 338 U. S., at 166, provided probable cause to arrest for illegally transporting liquor into a state. See *id.*, at 171. The Court found this case to be indistinguishable from *Carroll*, see *id.*, at 165, a case involving similarly thin evidence. See *supra*, at 12. While *Brinegar* professed to move beyond the common law conception of probable cause, the result in that case shows that this move was a very short journey. See Grano, 17 U. Mich. J. L. Ref., at 492-493.

The history and more recent treatment of probable cause open the door for multiple suspect arrests. The common law hue and cry demonstrates that even more aggressive practices were accepted. The definitions of probable cause promulgated by the first Congress and Chief Justice Marshall did not vary from the common law. Modern probable cause may be stricter, but not by much. The fact that this flexible standard is less than a preponderance of the evidence clears the way for multiple suspect arrests. If it had to be more probable than not that suspects were guilty, then police could never arrest more than

one suspect at a time for a one-perpetrator crime. Probable cause's accommodation of reasonable mistake is also consistent with multiple suspect arrests. As the next section demonstrates, the constitutionality of such arrests is reinforced by the importance of the arrest to investigating crime.

B. Arrests and Investigation.

Although good investigations lead to arrests, an arrest is not the end of a criminal investigation. The arrest is often the beginning of the most serious phase of an investigation. One of the most important investigative techniques, custodial interrogation, is difficult to accomplish without probable cause to arrest. Police cannot pick up a suspect for questioning unless there is probable cause to arrest. See *Dunaway* v. *New York*, 442 U. S. 200, 216 (1979). While officers do ask suspects to come to the station voluntarily, see F. Inbau, J. Reid, & J. Buckley, Criminal Interrogations and Confessions 211-212 (3d ed. 1986), some will not go without compulsion. See *id.*, at 212. In those cases, interrogation can only be secured through an arrest. See *ibid.* Given the importance of interrogations and confessions to solving crimes, see *id.*, at xiv; *Culombe* v. *Connecticut*, 367 U. S. 568, 571 (1961), the ability to arrest suspects is essential to the continuing investigation of a crime.

> "In each case police were confronted with one or more brutal murders which the authorities were under the highest duty to solve. Each of these murders was unwitnsessed, and the only positive knowledge on which a solution could be based was possessed by the killer. In each there was reasonable ground to *suspect* an individual but not enough legal evidence to *charge* him with guilt. In each the police attempted to meet the situation by taking the suspect into custody and interrogating him. * * * [N]o one suggests that any course held promise of solution of these murders other than to take the suspect into custody for questioning. The alternative was to close the books on the crime and forget it, with the suspect at large. This is a grave choice for a

society in which two-thirds of the murders already are closed out as insoluble." *Watts* v. *Indiana*, 338 U. S. 49, 58 (1949) (Jackson, J., concurring and dissenting) (emphasis in original).

An arrest opens the door for other investigative techniques. A suspect will be fingerprinted after an arrest, but it is unclear whether something short of probable cause will support a detention for the purpose of fingerprinting. See *Davis* v. *Mississippi*, 394 U. S. 721, 728 (1969). Many other physical tests of the suspect can be conducted after an arrest, such as placing the arrestee's hands under an ultraviolet lamp, taking fingernail scrapings, hair samples, urine samples, or a Breathalyzer test. See 3 W. LaFave, Search and Seizure § 5.3(c), pp. 132-133 (3d ed. 1966). Arrest also allows police to identify the suspect as the perpetrator through a lineup or other means. See American Law Institute, Model Code of Pre-Arraignment Procedure, Commentary, 294-295 (Proposed Draft 1975) (Model Code). The importance of DNA testing in criminal investigations, see Cronan, The Next Frontier for Law Enforcement: A Proposal for Complete DNA Databanks, 28 Am. J. Crim. L. 119, 127 (2000), insures that post-arrest investigation will be even more important in the future.

The importance of continuing the investigation after the arrest significantly influences the approach taken to the law of arrests. The Model Code rejected a preponderance of the evidence standard for arrests because it is

> "the purpose of this decision [to arrest] is to take a person into custody so that the determination can be made whether or not to charge the arrested person with crime. To require that guilt be more probable than not at the time of the arrest is to require at the beginning of the process the degree of certainty which is appropriate to its conclusion." Model Code, *supra*, at 294.

The higher standard would frustrate investigation efforts, forcing society to pay an excessively high price in unsolved

crime. See *id.*, at 294-295. One noteworthy concern to the commentators was the case of a crime with more than one suspect. A preponderance standard would frustrate the ability of officers to use the arrest and subsequent investigation to solve the crime, an unacceptable proposition. See *id.*, at 295-296.

This echoed the position adopted by the Second Restatement of Torts.

> "A sees B and C bending over a dead man, D. B and C each accuse the other of murdering D. A is not sure that either B or C did the killing, but he has a reasonable suspicion that either B or C killed D. A is privileged to arrest either or both." Restatement (Second) of Torts § 119, Illustration 2, p. 198 (1964); accord Model Code, *supra*, at 295.

Professor LaFave concurs with the Model Code's position.

> "There is much to be said for the Model Code position. If the function of arrest were merely to produce persons in court for purposes of their prosecution, then a more-probable-than-not test would have considerable appeal. But there is also an investigative function which is served by the making of arrests." See 2 LaFave, § 3.2(e), at 65.

Since the purpose of the arrest, however, "is to initiate a short-term process of sorting out, usually on the scene, to determine which person should be charged with crime, *i.e.*, arrested in the full sense of the word," it can be appropriate to arrest more than one suspect for a crime. *State* v. *Jordan*, 583 P. 2d 1161, 1163 (Or. App. 1978). Where further investigation is called for, officers should be allowed to arrest multiple suspects. As the next section demonstrates, this reasonable approach is not defeated by any of this Court's precedents.

C. Conflict.

Three decisions from this Court, *Wong Sun* v. *United States*, 371 U. S. 471 (1963), *Mallory* v. *United States*, 354 U. S. 449 (1957), and *Johnson* v. *United States*, 333 U. S. 10 (1948), could create a conflict over probable cause in multiple suspect situations to create a bright-line rule against multiple suspect arrests if improperly read. Bright lines are particularly inappropriate to probable cause decisions, *Ornelas* v. *United States*, 517 U. S. 690, 699 (1996), and none of these cases can support a bright-line rule favoring the defendant.

In *Johnson*, federal agents received information from the Seattle police that unknown individuals were smoking opium in the Europe Hotel. See 333 U. S., at 12. Three federal agents and a Seattle police detective went to the hotel, where they detected a strong scent of burning opium coming from Room 1. See *ibid.* The Seattle officer knocked on the door and identified himself to the defendant, who opened the door and let the officers in. See *ibid.* After seeing that she was alone in the room, the officers arrested the defendant and searched the room. The search uncovered "opium and smoking apparatus." *Ibid.*

This Court held the search was the product of an illegal arrest. The odor of burning opium was not enough to justify a warrantless search, see *id.*, at 13, so the search stood or fell on the legality of the arrest. While the United States attempted to justify the search as incident to a valid arrest, it "in effect, concedes that the arresting officer did not have probable cause to arrest petitioner until he had entered her room and found her to be the sole occupant." *Id.*, at 16. The Court agreed with the concession. "Thus the Government quite properly stakes the right to arrest, not on the informer's tip and the smell the officers recognized before entry, but on the knowledge that she was alone in the room, gained only after, and wholly by reason of, their entry of her home." *Ibid.* Since this initial entry was unlawful, the arrest and search were also invalid. See *id.*, at 17.

Mallory is another case susceptible to misreading. The victim was alone in the basement of her apartment when she was raped by "a masked man, whose general features were identified to resemble those of petitioner and his two grown nephews . . . ." 354 U. S., at 450. The petitioner, Mallory, and his nephews lived in the same building as the victim. *Ibid.* Mallory and one of the nephews disappeared from the apartment house soon after the crime. The petitioner was apprehended the next day and taken to police headquarters along with his nephews. See *ibid.* The suspects were then interrogated over the next ten hours until confessions were obtained. See *id.*, at 450-451.

Mallory is most noted for the holding that the Federal Rules of Criminal Procedure required suppressing a confession due to an excessive delay between the arrest and the arraignment. See *id.*, at 455-456. A statement at the end of the opinion addresses the nature of probable cause. In finding that the fact that there were multiple suspects did not excuse the delay, the Court stated that

> "[n]or is there an escape from the constraint laid upon the police by [FRCP, rule 5(a)] in that two other suspects were involved for the same crime. Presumably whomever the police arrest, they must arrest on 'probable cause.' It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on 'probable cause.' " *Id.*, at 456.

Wong Sun is the most recent case to suggest that probable cause must focus on one suspect. In addition to establishing the fruit of the poisonous tree doctrine for Fourth Amendment cases, the *Wong Sun* Court also ruled on probable cause to arrest. Federal agents were told by an arrestee that he had purchased heroin from a person known to him as " 'Blackie Toy' " who operated a laundry on Leavenworth Street in San Francisco. See 371 U. S., at 473. Federal agents went to a laundry on Leavenworth Street operated by James Wah Toy.

Upon learning that he was confronted by federal narcotics agents, Toy slammed the door to the laundry and ran through a hallway to his living quarters in the back. The agents pursued, arresting him as he reached into a nightstand drawer in his bedroom. See *id.*, at 474. There was no other information linking Toy or his laundry to "Blackie Toy" described by the informant. See *ibid.* This Court held that Toy's arrest was illegal because the agents lacked sufficiently precise information. The arrest was unlawful because there was no "information of some kind which had narrowed the scope of their search to this particular Toy." *Id.*, at 481.

These cases do not establish a *per se* rule requiring police to narrow their investigation to one suspect before making an arrest. *Johnson* and *Wong Sun* involved very low levels of suspicion. In *Johnson*, the officers did not know who or how many people were in the hotel room. Except for the smell of burning opium, the agents had no idea what was being done or who was doing it. This is very different from the present case in which the officer knew someone possessed the cocaine and could narrow his suspicion to the three occupants. This focus was also lacking in *Wong Sun*. The federal agents had scant information that pointed to a potentially large universe of suspects. The street named by the informant was 30 blocks long, and the laundry's name did not bear the name Toy. See *id.*, at 480-481. This Court's emphasis on the agent's failure to narrow the focus down to James Toy indicates that there were unknown other people named Toy that could have been subject to this information. Since the officers had no reason to believe that James Wah Toy went by the nickname "Blackie," the individual mentioned by the informant could have been one of many people with the last name "Toy" on a very large street in a city with a large Chinese population. As in *Johnson*, the number of potential suspects was unknown, distinguishing *Wong Sun* from this case.

The statements in *Mallory* must be read in the context of that decision. *Mallory* did not turn on the legality of the arrests,

but rather the length of time between the arrest and the arraignment. See 354 U. S., at 455. Also, the opinion asserts that there was ample evidence of probable cause to arrest the petitioner. See *ibid.* Therefore, there was no need to interrogate the defendant extensively before arraigning him. See *ibid.* The statement regarding multiple suspects, see *ibid.*, is made in the same context. Because other suspects were also arrested, the police must also have had probable cause to arrest them, making delay for the purpose of interrogation unnecessary and illegal. See *ibid.* Quite simply, "[t]he Supreme Court did not, however, suggest that the arrest of Mallory was illegal." Model Code, *supra*, at 295, n. 14.

The relatively low standard of probable cause and the importance of further investigation after arrest strongly favor allowing police to arrest multiple suspects of one crime where further investigation is called for. A careful examination of the facts in this case demonstrates that there was probable cause to arrest all three suspects.

III. There was probable cause to arrest all three occupants of the car.

The fact that police can arrest more than one suspect for a crime, see Part II, *supra*, does not end the inquiry. Not every case will have facts which support arresting more than one person. There is also an upper limit on the number of people that can be arrested for an offense. The probable cause requirement is not so flexible as to sanction dragnets, like the mass arrest of African-American youths struck down in *Davis* v. *Mississippi*, 394 U. S. 721, 722, 728 (1969). When the victim's only description of her assailant is that he was a "Negro youth," *id.*, at 722, the police must do further investigation to narrow the set of suspects before making arrests. Similarly, the fact that all of the occupants of a vehicle may be arrested when an officer discovers a crime there does not allow the police to arrest everyone in an enclosed structure after the commission of

a crime. For example, the police cannot arrest everyone in the crowded theater to determine who shouted "fire." Cf. *Schenck* v. *United States*, 249 U. S. 47, 52 (1919).

Probable cause requires a narrowing of the universe of suspects to some manageable number before making an arrest. The hypotheticals in the Model Code of Pre-Arraignment Procedure and the Second Restatement of Torts sanction arrests of two suspects for a crime. See *supra*, at 20-21. This is a floor, not a ceiling for the number of suspects who can be arrested in the appropriate multiple-suspect situation. In the right circumstances, it may be appropriate to arrest ten suspects. See Grano, Probable Cause and Common Sense: A Reply to the Critics of *Illinois* v. *Gates*, 17 U. Mich. J. L. Ref. 465, 496 (1984). "It causes us to overlook the success of the police in narrowing their investigation from the universe of all possible suspects, which may include much of the population, to ten individuals. In a modern, mobile society, this should be seen as a rather significant accomplishment." *Ibid.* The fact that three suspects were arrested is not a barrier to finding probable cause.

Officer Snyder's decision to arrest the three occupants of the vehicle was a reasonable choice that is consistent with the probable cause standard. He had much more than suspicion that one of the three had placed drugs in the car. The five plastic baggies containing what appeared to be (and was) cocaine was placed in the car by someone. Their placement between the rear seat and armrest strongly suggests that one of the current occupants placed the drugs there. See *supra*, at 8. The $763.00 in the glove compartment reinforces the notion that someone in the car is selling drugs. Officer Snyder had more than enough information to conclude that someone in that car hid the drugs.

What he did not know was who or how many of them committed the crime. While the owner of the car denied having drugs and consented to the search, the reports are filled with the cases of consensual searches incriminating the consenting party. See, *e.g.*, *United States* v. *Drayton*, 536 U. S. 194, 198-199

(2002); *Ohio* v. *Robinette*, 519 U. S. 33, 36 (1996). The placement of the drugs in the backseat and the money in the glove compartment spread the suspicion, since no passenger was closest to both. With suspicion equally diffused among the three occupants, arresting all of them was the fairest and most effective option.

United States v. *Di Re*, 332 U. S. 581 (1948) does not change the analysis. An informant told officials that he was to buy counterfeit gas ration coupons from Buttitta. See *id.*, at 583. When officials made the raid, the informant was in the rear seat holding coupons he said he obtained from Buttitta, who was in the driver's seat. See *ibid.* Di Re was in the passenger seat. All three were taken to the police station and searched, which uncovered more illegal coupons on Di Re. See *ibid.* The search of Di Re was held illegal because there was no probable cause to arrest him. *Id.*, at 595. Unlike the present case, there was evidence that the two other occupants of the car were involved in the crime, while the agents had no information pointing to Di Re. See *id.*, at 593. Where officers have information that points to some, but not all members of a vehicle, they can only arrest those at whom the information points. Where the suspicion is equally shared, then every suspect should be arrested.

The separation of the drugs and money also diminishes the innocence of all three occupants. Placing the drugs and money in these separate areas would be difficult for one occupant to do without the knowledge or cooperation of at least one other passenger. Officer Snyder's threat to arrest all three if someone did not own up to the drugs, see *Pringle* v. *State*, 805 A. 2d 1016, 1019 (Md. 2002), must be understood in this context. The admonition was not just an inducement to confess, but also an effort to get any innocent passengers who had knowledge of the crime to incriminate the guilty. The Maryland Court of Appeals' characterization of this good police work as exploitation, see *id.*, at 1031, is both inaccurate and unfair.

Once his questioning failed to discover the culprit, Officer Snyder's options were limited. A *Terry* v. *Ohio*, 392 U. S. 1 (1968) frisk had little prospect of discovering any further information since the perpetrator already kept the drugs and money away from his person. If he let the suspects go, then there was little chance of solving the crime. The only alternative would be to check the baggies of cocaine for fingerprints in the hope that the perpetrator's fingerprints were already in a fingerprint database. Obtaining fresh fingerprints from the suspects would be very difficult, since it is unlikely that Officer Snyder carried a fingerprinting kit with him. Since taking them to the stationhouse for fingerprinting without probable cause raises serious Fourth Amendment issues, see *Davis*, 394 U. S., at 728, arrest is the most reasonable means to solve the crime.

Not every crime can be solved, but a crime in which suspicion has been narrowed so closely should be solved. The equally shared suspicion between the three, the failure of any members of the trio to give more information, and the inability to solve the crime without an arrest and more investigation all underscore the reasonableness of the arrest. This reasonableness supports the conclusion that the arrests were based upon probable cause.

Amicus does not advocate a separate reasonableness test for probable cause. Probable cause is the Fourth Amendment's reasonableness standard, and any additional balancing test is an unnecessary complication. See *Dunaway* v. *New York*, 442 U. S. 200, 213 (1979). But the reasonableness of Officer Snyder's actions is still relevant to the constitutionality of the arrests.

The imprecise probable cause standard, see *Ornelas* v. *United States*, 517 U. S. 690, 695 (1996), "is a fluid concept-turning on the assessment of probabilities in particular factual contexts . . . ." *Illinois* v. *Gates*, 462 U. S. 213, 232 (1983). It is applied in a nontechnical manner under "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar* v.

United States, 338 U. S. 160, 175 (1949). The evidence is examined " 'not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.' " *Gates*, *supra*, at 232 (quoting *United States* v. *Cortez*, 449 U. S. 411, 418 (1981)). Probable cause allows officers to make reasonable mistakes without violating the Fourth Amendment. *Hill* v. *California*, 401 U. S. 797, 804 (1970). Since whatever error Officer Snyder may have made for arresting the three for the crime was reasonable, there was probable cause. The objective "reasonable officer" standard is relevant to this inquiry.

Probable cause protects several constitutional interests. It protects liberty since suspicionless searches and arrests are inconsistent with this value. See *Henry* v. *United States*, 361 U. S. 98, 102 (1959). Privacy is similarly protected. See *ibid.* Probable cause also limits police discretion. "To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Brinegar*, 338 U. S., at 176. The arrests in this case are consistent with these values.

As discussed above, the arrests were far from suspicionless. There was ample reason to believe that one or more of the three was involved in drug dealing. This type of suspicion also limits an officer's discretion. There was no dragnet like the one condemned in *Davis*. The Maryland Court of Appeals' contention that upholding this arrest could lead to mass arrests such as all the occupants of a movie theater, see *Pringle*, 805 A. 2d, at 1027, n. 12, is specious. If there is one certainty about the probable cause standard, it is that every case must be examined upon its own facts. See, *e.g.*, *Ornelas*, 517 U. S., at 696; *Gates*, 462 U. S., at 232; *Sibron* v. *New York*, 392 U. S. 40, 59 (1968). Under probable cause "[o]ne simple rule will not cover every situation." *Adams* v. *Williams*, 407 U. S. 143, 147 (1972). Therefore, "because the mosaic which is analyzed for a reasonable-suspicion or probable-cause inquiry is multi-faceted, 'one determination will seldom be a useful precedent for another.' " *Ornelas*, *supra*, at 698 (quoting *Gates*, *supra*, at

238, n. 11). While there are exceptions to this rule, see *ibid.*, arresting three suspects will not dictate upholding the arrest of a much larger number of individuals. See *Ornelas*, *supra*, at 698. Probable cause is thus particularly ill-suited to the Maryland court's slippery slope argument. While the number of potential arrestees may at some point attenuate the suspicion sufficiently to defeat probable cause, that determination must be made on a case-by-case basis.

Officer Snyder's good police work should not be punished through the exclusion of Pringle's confession.[5] Upholding the search will not grant police license to make mass arrests. Instead, it recognizes the importance of the arrest to investigation and the flexibility of the probable cause standard when confronted with multiple suspects. Upholding the arrests allows probable cause to continue to maintain the balance between individual rights and public safety.

CONCLUSION

The decision of the Maryland Court of Appeals should be reversed.

May, 2003

Respectfully submitted,

CHARLES L. HOBSON

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5. Because Pringle's arrest was supported by probable cause, *amicus* does address the issue of whether his confession was the product of an illegal arrest under *Brown* v. *Illinois*, 422 U. S. 590 (1975).

Supreme Court, U.S.
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No. 02-809

In the Supreme Court of the United States

STATE OF MARYLAND, PETITIONER

v.

JOSEPH JERMAINE PRINGLE

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether there is probable cause to arrest the occupants of a car when drugs packaged for distribution and a roll of cash are found in the passenger compartment and no occupant acknowledges ownership of the drugs.

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In the Supreme Court of the United States

No. 02-809

STATE OF MARYLAND, PETITIONER

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JOSEPH JERMAINE PRINGLE

ON WRIT OF CERTIORARI
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BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether there is probable cause to arrest the occupants of a car when drugs packaged for distribution and a roll of cash are discovered in the passenger compartment and no occupant acknowledges ownership of the drugs. The resolution of that issue has substantial implications for the enforcement of the federal narcotics laws. The United States therefore has a significant interest in the Court's disposition of this case.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

and no Warrants shall issue, but upon probable cause * * * ."

STATEMENT

1. On August 7, 1999, at 3:16 a.m., Officer Jeffrey Snyder of the Baltimore County Police Department stopped a car after observing that it was speeding and the driver was not wearing a seat belt. The car contained three occupants: the car's owner Donte Partlow, who was driving; respondent Joseph Pringle, who was in the front passenger seat; and Otis Smith, who was in the rear seat. Officer Snyder asked Partlow for his license and registration. When Partlow opened the glove compartment to retrieve those documents, Officer Snyder noticed a substantial amount of cash rolled into a bundle. After a computer check of the documents revealed no outstanding violations, Officer Snyder directed Partlow to exit the vehicle and issued him an oral warning. Officer Snyder then asked Partlow whether he had any drugs or weapons in the car. Partlow replied that he did not. Pet. App. 2a-3a.

Officer Snyder next sought and received permission from Partlow to search the vehicle. He began the search after telling the remaining two passengers, respondent and Smith, to exit the vehicle and wait outside the car with Partlow. While examining the area of the front seat, Officer Snyder retrieved the roll of money, totaling $763, from the glove compartment. Later, upon lowering the armrest in the rear seat, Officer Snyder discovered five baggies of crack cocaine that had been lodged between the upright armrest and the seat. Pet. App. 3a-4a & n.2.

Officer Snyder separately questioned the three occupants about the cocaine and money. He advised each of them that they would all be arrested if no one acknowledged ownership of the drugs. None of the occupants gave Officer Snyder any information about the drugs or money. All three then were arrested and transported to the police station. Respondent Pringle, after waiving his *Miranda* rights at the station, confessed that the drugs and money belonged to him. He explained that the three men were going to a party and that he intended to sell the cocaine or exchange it for sex. He also acknowledged that he had placed the drugs behind the rear seat armrest, and stated that neither Partlow nor Smith had known about the drugs. Partlow and Smith were then released, and respondent was charged with possession of cocaine and possession of cocaine with intent to distribute it. Pet. App. 4a; 3/23/2000 Tr. 22-24.

2. a. Respondent moved before trial to suppress his confession, arguing, *inter alia*, that his arrest was not supported by probable cause and that his confession was the tainted fruit of the unlawful arrest. Pet. App. 4a-5a. Following a hearing, the trial court denied respondent's motion. The court explained that the cocaine was within respondent's "reach in the way he was seated," and that the drugs "were not secreted" but "were just basically placed back there and hidden by the armrest," apparently to "hide them * * * from the police." *Id.* at 58a. The court also emphasized "the fact that there was money in front." *Id.* at 59a. The court ruled that, because there was "money in front" and "drugs in the back, both in arm's reach" of respondent, "the officer had probable cause to make the arrest as he did." *Ibid.*

b. At trial, a police detective who qualified as an expert in controlled substances testified that the 0.7 grams of cocaine found in the car were intended for distribution. Pet. App. 53a-54a. He reached that conclu-

sion on the basis that the five baggies had been "packaged individually, which is the way they are usually packaged for resale." *Id.* at 54a. The jury found respondent guilty of possession of cocaine and possession of cocaine with intent to distribute it. *Id.* at 50a.

c. The Court of Special Appeals of Maryland affirmed. Pet. App. 50a-77a. The court concluded that the "circumstances were sufficient to constitute probable cause to make an arrest" because "there were five baggies behind an armrest in the back seat and a substantial amount of cash in the glove compartment located in front of [respondent]." *Id.* at 61a.

3. The Maryland Court of Appeals, by a 4 to 3 vote, reversed respondent's convictions. Pet. App. 1a-49a.

a. The majority reasoned that, "[i]n a specific case, we apply the elements of the alleged offense to the facts and circumstances of that case to determine whether the police officer had probable cause to make a warrantless arrest of a particular individual for that specific offense." Pet. App. 21a. The elements of the drug possession charges brought against respondent, the majority explained, required establishing his "'knowledge' of the [cocaine] and 'dominion or control' over the substance." *Ibid.*

The majority ruled that, "[w]ithout additional facts available to the officer that would tend to establish [respondent's] knowledge and dominion or control over the drugs, the mere finding of cocaine in the back armrest when [respondent] was a front seat passenger in a car being driven by its owner is insufficient to establish probable cause for an arrest for possession." Pet. App. 21a. A contrary conclusion, in the majority's view, would mean that the discovery of drugs in "a bus or other kind of vehicle, or even a place, *i.e.*, movie theater," would allow the arrest of "everyone in such a

vehicle or place * * * until some person confessed to being in possession of the contraband." *Id.* at 21a-22a n.12. The majority attached no significance to the roll of cash found in the glove compartment, reasoning that "[m]oney, without more, is innocuous," *id.* at 22a, and observing that the money was not in plain view when in the glove compartment, *id.* at 23a. For those reasons, the majority held that the circumstances were "insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." *Ibid.*[1]

b. The dissent believed that the facts apparent to Officer Snyder "establishe[d] probable cause for the arrest of each of the three individuals, including [respondent]." Pet. App. 38a. In the dissent's view, a "police officer who discovers (at 3 a.m.) three passengers in a vehicle which contained several baggies of cocaine in the rear armrest and a large wad of money (arguably, 'drug money') in the front glove compartment could reasonably believe that those persons were exercising joint and constructive possession of the contraband in the vehicle, were engaging in drug trafficking, or conspiring to engage in drug trafficking, thus establishing probable cause for the arrest of each individual." *Id.* at 41a. The dissent further observed that, although there was probable cause for an arrest, "[w]hether the State's Attorney can produce sufficient evidence to demonstrate, beyond a reasonable doubt, actual or constructive dominion or control over the narcotics and knowledge therein to warrant a conviction is another question

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[1] The majority further concluded that respondent's confession at the police station was the fruit of his unlawful arrest. Pet. App. 24a-34a. That issue is not before this Court.

—one that is properly left to the prosecutor, initially, and the trier of fact, subsequently." *Id.* at 41a-42a.

SUMMARY OF ARGUMENT

An officer faced with the question whether there is probable cause for an arrest must make a practical, common-sense judgment whether there is a fair probability that the suspect has committed a crime. Practical and common-sense considerations compel the conclusion that there was probable cause to arrest respondent in this case. First, when a group of persons arranges to meet and travel together by car, it is reasonable to assume that the group is engaged in a common enterprise. That generalization applies equally when the enterprise involves crime. In addition, individuals involved in drug trafficking are unlikely to carry out their crimes in the immediate company of innocent bystanders, especially within the close confines of an automobile.

This Court's decisions support the inference that the discovery of contraband in an automobile casts suspicion on all of the vehicle's passengers in the crime. In *Wyoming* v. *Houghton*, 526 U.S. 295 (1999), the Court held that an officer who has probable cause to search an automobile may search containers owned by a passenger. The Court based that conclusion on the recognition that passengers will often be engaged in a joint endeavor with the driver. And in *County Court of Ulster County* v. *Allen*, 442 U.S. 140 (1979), the Court held that the presence of illegal handguns in the passenger compartment of a car justified an inference that all of the passengers were culpably involved with the firearms.

In light of those holdings, Officer Snyder had probable cause to arrest respondent in this case. The discovery of a commercial quantity of cocaine and a roll of cash in the passenger compartment suggested that the passengers were jointly involved in drug trafficking. Although respondent was seated in the front seat and the drugs were found in the rear seat, both the cash and the drugs were within his arm's reach. Even if another passenger had concealed the drugs in the rear seat, it was reasonable to infer that the passenger acted in furtherance of the occupants' common interest in avoiding apprehension. Finally, no facts apparent to Officer Snyder at the scene negated the inference that the passengers were jointly associated with the cocaine. None of the passengers, for instance, acknowledged exclusive ownership of the contraband, and none expressed surprise upon discovery of the drugs.

Neither *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), nor *United States* v. *Di Re*, 332 U.S. 581 (1948), requires the conclusion that probable cause was lacking in this case. Unlike *Ybarra*, which involved a person who happened to patronize a particular tavern at the time that the tavern was searched for evidence of drug trafficking, respondent's presence in a car carrying a commercial quantity of cocaine was the result of a consensual arrangement among the passengers to meet and travel together at that time. And while *Di Re* invalidated the arrest of an automobile passenger who was in a car when counterfeit ration coupons were found on the person of another occupant, the continuing vitality of *Di Re* is uncertain in light of later decisions clarifying that a car's passengers normally may be assumed to be engaged in a joint enterprise with each other. In any event, *Di Re* involved unique circumstances in which, unlike here, there was specific reason to doubt the passenger's involvement.

The Maryland Court of Appeals gave inadequate weight to the interest in effective law enforcement when it held that there was no probable cause in this case. The probable cause standard embodies a balance of the societal interests in effectively enforcing the criminal laws and in protecting innocent citizens from unreasonable arrests. When a commercial quantity of drugs is found in a car, it is clear that a crime has been committed, and that some or all of the passengers are the guilty parties. Concerns about unreasonable arrests are limited in that situation, and the interest in ensuring the arrest and prosecution of the actual offenders is significant.

The Maryland Court of Appeals, however, required Officer Snyder to weigh the evidence supporting each of the specific elements of the offense of drug possession before deciding to arrest respondent. Officers at the scene are not expected to sort through the specific elements of uncharged offenses. Instead, they are to make a non-technical and practical determination whether the suspect is involved in criminal activity. There was ample cause in this case for Officer Snyder to conclude that respondent and the other two passengers were engaged in crime.

ARGUMENT

PROBABLE CAUSE EXISTS TO ARREST THE OCCUPANTS OF A CAR WHEN A QUANTITY OF DRUGS SUITABLE FOR DISTRIBUTION AND A ROLL OF CASH ARE FOUND IN THE PASSENGER COMPARTMENT AND NONE OF THE PASSENGERS ACKNOWLEDGES EXCLUSIVE OWNERSHIP OF THE CONTRABAND

The warrantless arrest of an individual in a public place is consistent with the Fourth Amendment if supported by probable cause. *United States* v. *Watson*, 423 U.S. 411 (1976). Under the "practical, common-sense judgment called for in making a probable-cause determination," *Illinois* v. *Gates*, 462 U.S. 213, 244 (1983), the discovery of a commercial quantity of cocaine and a bundle of cash in the passenger compartment of an automobile affords probable cause for arresting each of the occupants. There exists a "fair probability" or "substantial chance" of each passenger's association with the drugs in those circumstances, which suffices to establish probable cause for an arrest under this Court's decisions. *Id.* at 238, 243-244 n.13, 246.

A. An Officer Can Reasonably Infer Upon Finding A Commercial Quantity Of Drugs And A Roll Of Cash In A Car That Each Of The Passengers Is Involved In The Crime

"Perhaps the central teaching of [this Court's] decisions bearing on the probable-cause standard is that it is a practical, nontechnical conception" that deals in "common-sense conclusions about human behavior." *Gates*, 462 U.S. at 231 (internal quotation marks and citations omitted). Common sense dictates that, when drugs packaged for distribution and a roll of cash are found in an automobile, the partners in travel may well be partners in crime. And the practical implications of possessing a commercial quantity of drugs in the passenger compartment of a car support an inference that, absent affirmative indication to the contrary, the passengers are jointly involved in the illegality.

1. *Passengers traveling together in an automobile are frequently engaged in a common enterprise, including when the circumstances involve crime*

When individuals arrange to meet and travel together in a private car, it is fair to assume that their travel is in furtherance of a common objective or design, whether of a lawful or unlawful nature. Accordingly, an officer who discovers evidence of illegal activity in a car usually can reasonably infer that all of the vehicle's occupants are culpable.

That common-sense proposition runs through this Court's decisions. In *Maryland* v. *Wilson*, 519 U.S. 408 (1997), for instance, the Court held that a police officer's settled authority to order the driver out of the car when conducting a traffic stop extends as well to the remaining passengers. The officer's authority, the Court explained, is designed to reduce "the possibility of a violent encounter" stemming from efforts to prevent the officer from uncovering "evidence of a more serious crime." *Id.* at 414. "[T]he motivation of a passenger to employ violence to prevent apprehension of [that] crime is every bit as great as that of the driver," *ibid.*, the Court held, reflecting the natural assumption that the car's occupants would be jointly involved with the driver in committing the crime.

The Court's decision in *Wyoming* v. *Houghton*, 526 U.S. 295 (1999), is to the same effect. *Houghton* holds that the presence of probable cause to search an automobile for contraband extends not only to containers in the car owned by the driver, but also to containers belonging to a passenger. In rejecting the suggestion that the Fourth Amendment draws a distinction between the driver's belongings and those of passengers, the Court reasoned that "a car passenger * * * will often

be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id.* at 304-305. A passenger's "presence in the car with the driver," the Court further observed, "provide[s] * * * reason to believe that the two were in league." *Id.* at 306.

The inference that the passengers are jointly associated with contraband found in the passenger compartment played a key role in *County Court of Ulster County* v. *Allen*, 442 U.S. 140 (1979). That decision upheld the constitutionality of a statutory presumption in New York law that allowed a jury to conclude from the presence of a firearm in a car that all of the vehicle's occupants possessed the firearm.[2] The case arose from the discovery during a traffic stop of two handguns in the purse of a front-seat passenger. The Court thought it "entirely reasonable" for the jury to have assumed that the handguns were not in the sole possession of the passenger, noting that she was 16 years old, that the handguns were too large to be fully concealed in her purse, that the purse was open, that one of the guns was in plain view and within "easy access" of the driver and the two rear seat passengers, and that the other passengers may have attempted to conceal the guns in her purse in reaction to the traffic stop. *Id.* at 163-164. The Court thus viewed the case as "tantamount to one in which the guns were lying on the floor or the seat of the car in the plain view of the three other occupants." *Id.* at 164.

In such circumstances, the Court held, "it is surely rational to infer that each of the [passengers] was fully

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[2] The presumption did not apply if the firearm was found on the person of one of the passengers. 442 U.S. at 142-143 n.1.

aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons." 442 U.S. at 164-165. The Court went on to rule that the evidence concerning the presence and location of the firearms in the car established "more likely than not" that all of the occupants were in possession of the handguns. *Id.* at 165.[3] If the presence of the handguns in the car in the circumstances of *Allen* demonstrates "more likely than not" that all of the passengers possessed the firearms, the discovery of a commercial amount of drugs in a car necessarily establishes the existence of probable cause to arrest the occupants.[4]

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[3] In fact, the Court appeared to assume the validity of a parallel New York provision addressing illegal drugs under which all passengers were presumed "culpably involved" when a commercial quantity of drugs was found in a car. 442 U.S. at 165 n.27.

[4] While the Court has eschewed defining probable cause by reference to a "general, numerically precise degree of certainty," *Gates*, 462 U.S. at 235, the Court has indicated that probable cause entails a lesser showing than preponderance of the evidence. See *Illinois* v. *Wardlow*, 528 U.S. 119, 123 (2000) (explaining that the "reasonable suspicion" standard for *Terry* stops "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence"); *Gates*, 462 U.S. at 235 (observing that "[f]inely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place" in probable cause analysis, and that no "prima facie showing" is required to establish probable cause); *Texas* v. *Brown*, 460 U.S. 730, 742 (1983) (plurality opinion) (explaining that probable cause "does not demand any showing that [the officer's belief] be correct or more likely true than false"); *Gerstein* v. *Pugh*, 420 U.S. 103, 121 (1975) (noting that probable cause "does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands"). See generally Model Code of Pre-Arraignment Procedure § 120.1 cmt., at 294-296 (1975) (rejecting as too strict a more-probable-than-not standard for warrantless arrests). The term "probable" in the probable cause standard does not suggest a preponderance test: that word "in an earlier time meant that which was capable of being proved or worthy of belief, and was not linked to more recent notions of probabilities measured mathematically." *Id.* at 292-293.

2. Passengers in an automobile as a practical matter are likely to be aware of the presence of a commercial quantity of drugs in the vehicle

The discovery of narcotics and a roll of cash in a car affords reasonable grounds for suspecting the involvement of all of the passengers not only because they are fairly assumed to be "engaged in a common enterprise," *Houghton*, 526 U.S. at 304, but also because, for various practical reasons, the circumstances are particularly suggestive of joint criminality. The propriety of inferring that an individual in the company of persons engaged in crime is a confederate in their unlawful conduct turns on "whether the known criminal activity was contemporaneous with the association and whether the circumstances suggest that the criminal activity could have been carried on without the knowledge of all persons present." *United States* v. *Martinez-Molina*, 64 F.3d 719, 727 (1st Cir. 1995); accord *United States* v. *Hillison*, 733 F.2d 692, 697 (9th Cir. 1988). See generally 2 Wayne R. LaFave, *Search & Seizure* § 3.6(c), at 309-310 (3d ed. 1996). The occupants of a car in which a merchantable quantity of narcotics is discovered were present during the illegality, and they are likely to have known about, and thus to be associated with, the crime.

a. As a general rule, "criminals rarely welcome innocent persons as witnesses to serious crimes and rarely seek to perpetrate felonies before larger-than-necessary audiences." *United States* v. *Ortiz*, 966 F.2d 707,

712 (1st Cir. 1992), cert. denied, 506 U.S. 1063 (1993). Cf. *United States* v. *Gainey*, 380 U.S. 63, 67-68 (1965) ("folklore teaches" that "strangers to the * * * business" of manufacturing illegal liquor "rarely penetrate the curtain of secrecy"). Those involved in the drug trade thus ordinarily would not carry out their crimes in the company of unknowing third parties. See *United States* v. *Burrell*, 963 F.2d 976, 988 (7th Cir.) (noting unlikelihood that "drug traffickers * * * discuss or deliver large quantities of drugs in the presence of innocent bystanders"), cert. denied, 506 U.S. 928 (1992). That is especially the case within the close quarters of the passenger compartment of an automobile, in which any display or handling of an amount of drugs suitable for distribution would likely come to the attention of the other passengers.[5]

In addition, unlike the case with other fruits or evidence of crime, the presence of drugs necessarily betrays criminal activity. A fellow passenger exposed to stolen merchandise or counterfeit currency may have no reason to suspect any illegality. The discovery of such evidence in a car therefore does not necessarily

[5] In *Allen*, for instance, this Court recited with apparent approval New York's justification for presuming the culpability of all of the passengers when a commercial quantity of drugs is found in a car: "We do not believe that persons transporting dealership quantities of contraband are likely to go driving about with innocent friends or that they are likely to pick up strangers." 442 U.S. at 165-166 n.27 (quoting *Interim Report of Temporary State Comm'n to Evaluate Drug Laws*, N.Y. Leg. Doc. No. 10, at 69 (1972)); see *United States* v. *Buchanan*, 70 F.3d 818, 832 (5th Cir.) (noting testimony that an individual transporting a substantial quantity of narcotics "would not allow a complete outsider to ride in the car"), cert. denied, 517 U.S. 1114 (1996).

implicate all of the passengers. See, *e.g.*, *People* v. *Foster*, 788 P.2d 825, 829 (Colo. 1990) (finding no probable cause to arrest a passenger in a pickup truck carrying a motorcycle that had been stolen months beforehand). By contrast, the presence of drugs—without more—immediately reveals criminal activity. As a result, persons carrying narcotics for distribution are unlikely to travel in a car with individuals who are unaware of the crime; and conversely, individuals who travel in a car containing a commercial quantity of drugs are likely to know about the contraband. Even if the drugs are hidden from plain view by the time they are discovered by police officers, the fact that a party attempted to conceal the drugs within the passenger compartment indicates that the contraband had been manipulated in the presence of the other occupants.[6]

For those reasons, the discovery of an amount of narcotics suitable for distribution in the passenger compartment supports an inference that all of the car's occupants were aware of, and hence involved with, the drugs. See *Allen*, 442 U.S. at 164-165 (presuming that passengers were "fully aware" of guns contained in purse in front seat "and had both the ability and the intent to exercise dominion and control over the weapons"); *United States* v. *Carranza*, 289 F.3d 634, 641 (9th Cir.) ("a passenger's presence in a vehicle carrying a commercial quantity of drugs across the border is

[6] If the narcotics are found concealed on the person of an occupant or in a locked and stowed compartment only accessible to the driver, there may be less reason to infer that all passengers were aware of the existence of the contraband. But see *Houghton*, 526 U.S. at 298, 300 (assuming that discovery of a syringe used to take drugs on the driver's person conferred probable cause to search the entire car, including a purse belonging to a passenger).

enough to find probable cause"), cert. denied, 123 S. Ct. 572 (2002); *United States* v. *Garcia*, 848 F.2d 58, 60 (4th Cir.) (permissible to infer awareness of drugs possessed by companion when amount is fit for distribution), cert. denied, 488 U.S. 957 (1988). Cf. *Ker* v. *California*, 374 U.S. 23, 36-37 (1963) (plurality opinion) (probable cause to arrest individual who "had been using his apartment as a base of operations for his narcotics activities" also establishes probable cause to arrest his wife, who was present in the apartment, on ground that "she was in joint possession with her husband").

b. The facts of this case are illustrative. When Officer Snyder found five baggies of cocaine and a roll of money in the passenger compartment, he could reasonably conclude that the occupants were engaged in the distribution of cocaine. The bundle of cash suggested that some drugs had already been sold, and the cocaine packaged for distribution indicated that additional sales were yet to be completed. While "[m]oney, without more," may be "innocuous," Pet. App. 22a, the presence of cocaine packaged for sale together with the cash is indicative of drug trafficking.[7]

Even if those circumstances would not establish adequate cause for concluding that the passengers were then engaged in drug sales, Officer Snyder still could reasonably conclude that respondent and the other occupants were aware of (and associated with) the cocaine in the vehicle. First, although the Maryland Court of Appeals emphasized that respondent sat in the

[7] Also, the lateness of the hour at the time of the traffic stop (3:16 a.m.) could contribute to an inference that the passengers were engaged in illegal drug trafficking. See 4 LaFave, *supra*, § 9.4(d), at 162-164.

front seat rather than the rear seat where the cocaine was found, Pet. App. 21a-23a, the drugs were within his (and the other occupants') reach, see *id.* at 79a. Indeed, the rule of *New York* v. *Belton*, 453 U.S. 454 (1981), permitting the search of the passenger compartment incident to the arrest of an occupant, rests on the assumption that the entire passenger compartment is within the immediate reach of any passenger. See *id.* at 460.

At any rate, even if another passenger in fact concealed the cocaine behind the rear seat armrest, the inference would remain that he did so with the awareness of the other occupants and in furtherance of their common interest in avoiding apprehension. See *Houghton*, 526 U.S. at 304-305; *Wilson*, 519 U.S. at 413-414. The discovery of the money and drugs in separate locations in the car might have bolstered that inference, indicating to Officer Snyder that the various passengers were working together. And the discovery of the drugs behind the armrest rather than in a more secreted location suggested that the cocaine had been in plain view of the passengers but was hastily lodged between the armrest and the seat during the traffic stop. Even if the cocaine might have been placed there previously, the apparent lack of concern that the other passengers would readily discover the contraband points toward their association with the drugs. See *United States* v. *Ross*, 456 U.S. 798, 820 (1982) ("by their very nature [contraband] goods must be withheld from public view").

Consequently, the circumstances apparent to Officer Snyder at the scene, when considered through the lens of common-sense assumptions about the presence of narcotics in the passenger compartment of a car, afforded him ample cause for suspecting respondent and the other passengers of culpability in connection with

the cocaine. The contrary conclusion of the Maryland Court of Appeals cannot be squared with the practical and non-technical inquiry demanded by the probable cause standard.

3. *This Court's decisions in* Ybarra *and* Di Re *do not suggest that probable cause is lacking in the circumstances of this case*

Respondent relies principally (Br. in Opp. 4-8) on this Court's opinions in *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), and *United States* v. *Di Re*, 332 U.S. 581 (1948). Neither of those decisions is at odds with a finding of probable cause in the circumstances of this case.

a. In *Ybarra*, the Court held that officers executing a warrant to search a particular tavern and its bartender for evidence of heroin trafficking did not have probable cause to search one of the tavern's patrons. 444 U.S. at 90-92. The Court explained that, although "the police possessed a warrant based on probable cause to search the tavern in which Ybarra happened to be at the time the warrant was executed," a "person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.* at 91. The search of an individual "must be supported by probable cause particularized with respect to that person," the Court reasoned, and that condition is not met when "coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be." *Ibid.*

The tavern in *Ybarra* is unlike the bar in this case. Although Ybarra "happened to be" at the tavern during execution of the search warrant, there was no reason to suppose that his physical proximity to the suspected crime was anything more than "coincidental[]." 444

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U.S. at 91. There was no basis for inferring that he had taken part in, or even was aware of, the sale of heroin at the tavern. The passengers in a private car, by contrast, presumably know one another and have arranged to meet and travel together at a particular time and by a particular route. This Court in *Houghton* distinguished *Ybarra* on exactly that basis, observing that car passengers, "unlike the unwitting tavern patron in *Ybarra*," are often "engaged in a common enterprise with the driver." 526 U.S. at 304. See *United States* v. *Hernandez*, 314 F.3d 430, 435 (2002) ("A car, unlike a tavern, is not open to the public. The passenger in a car typically has a relationship with the driver * * *."), amended on other grounds, 322 F.3d 592 (9th Cir. 2003).

For the same reason, the Maryland Court of Appeals was wrong to assume (Pet. App. 21a-22a n.12) that a finding of probable cause in this case would compel the conclusion that the discovery of contraband in a bus or theater would justify the arrest of all who are present. The random association between strangers who happen contemporaneously to ride in the same public bus or to patronize the same commercial establishment is akin to the situation in *Ybarra*. That situation differs in kind from the circumstances of this case.[8]

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[8] *Sibron* v. *New York*, 392 U.S. 40 (1968), which the Court cited in *Ybarra* (444 U.S. at 91), is not pertinent to this case. In *Sibron*, the Court ruled that there was no probable cause to arrest an individual solely on the basis that he had conversations with several drug addicts in the course of an eight-hour period. 392 U.S. at 62-63. The content of the conversations was not known, and no materials had been passed between the parties. While it is not reasonable to infer that persons who merely "talk to narcotic addicts are engaged in the criminal traffic in narcotics," *id.* at 62, in

b. This Court's decision in *Di Re*, although overturning the arrest of an automobile passenger, does not support the conclusion that probable cause was lacking in this case. *Di Re* arose from a government informer's communication to an investigator of his plans to purchase counterfeit gasoline ration coupons from an individual named Buttitta at a certain location. The investigator followed Buttitta's car to the appointed location, and, on approaching the car, found the informer in the rear seat holding two gasoline ration coupons later determined to be counterfeit. The informer told the investigator that he had obtained the coupons from Buttitta, who was in the driver's seat. A third individual, Di Re, was in the front passenger seat. The investigator arrested all three, and a subsequent search of Di Re at the police station uncovered counterfeit coupons on his person. 332 U.S. at 583. This Court set aside Di Re's arrest, holding that the investigator lacked probable cause to suspect Di Re's involvement in the sale of the counterfeit coupons to the informer. *Id.* at 593-594.

That holding does not assist respondent in this case. To begin with, *Di Re* was decided long before this Court's opinions in *Houghton*, *Wilson*, and *Allen*. As explained (pp. 10-12, *supra*), those decisions have now established that the discovery of contraband in the passenger compartment of a car ordinarily justifies an inference that the passengers are jointly culpable. It is not clear that the Court would reach the same result in *Di Re* after those subsequent decisions.

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this case, there is no question that a crime was committed and respondent was in the car with a commercial amount of cocaine.

In any event, the reasons identified by the Court for finding a lack of probable cause in *Di Re* have no application in the context of this case. The Court first observed that, at the time of Di Re's arrest, the investigator had no "information indicating that Di Re was in the car when [the informer] obtained ration coupons from Buttitta" or that Di Re "heard or took part in any conversation on the subject." 332 U.S. at 593. The Court next explained that the crime of selling counterfeit coupons "does not necessarily involve any act visibly criminal." *Ibid.* That is because, even if Di Re had witnessed the passing of the papers to the informer, "it would not follow that he knew they were ration coupons," or, if he recognized them as such, that he "would know them to be counterfeit." *Ibid.* Finally, the Court ruled that any inference of Di Re's involvement based on his possibly witnessing the exchange was erased when the informer, who had no evident reason to avoid incriminating Di Re, "pointed out Buttitta, and Buttitta only, as a guilty party." *Id.* at 594.[9]

None of those considerations applies in the circumstances of this case. First, whereas there was no indication that Di Re was present in the car at the time of the illegal transaction, 332 U.S. at 593, the passengers in an automobile carrying narcotics were present in the car contemporaneously with the unlawful possession. Second, whereas Di Re, even if a witness to the transfer of the coupons, might well not have perceived any

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[9] The government had not called the informer as a witness in Di Re's trial or shown that the informer was unavailable, leading the Court to "assume that [the informer's] testimony would not have been helpful in bringing guilty knowledge home to Di Re." 332 U.S. at 593.

illegality in the passing of seemingly innocuous papers, the possession in a car of a commercial quantity of cocaine "necessarily involve[s] an[] act visibly criminal" to passengers who observe it, *ibid.* Finally, the circumstances in *Di Re* presented an affirmative reason for concluding that Di Re, despite his presence in the car, was not involved in the illegal exchange: the informer, who was a party to the offense and had no apparent motive to color his description of it, fingered Buttitta alone and made no mention of Di Re. *Id.* at 594.

There may be a comparable reason in certain situations to suppose that a particular individual was unaware of the presence of narcotics in the passenger compartment of a car—such as if the passenger were a child or a hitchhiker, see *Allen*, 442 U.S. at 156 n.15, 163, or if the location of the contraband and other contextual considerations made clear that it belonged exclusively to a specific person, see note 6, *supra*. In this case, however, there was no such basis for disregarding the inference that all three passengers were aware of the cocaine. None of them, for instance, acknowledged exclusive ownership of the drugs when questioned by Officer Snyder during the traffic stop. Nor did any of them express surprise at the discovery of the drugs. And no fact apparent to Officer Snyder at the scene suggested that only one passenger could have been aware of (and involved with) the drugs. Consequently, Officer Snyder, notwithstanding *Di Re*, had probable cause to arrest respondent and the other occupants.[10]

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[10] *Johnson* v. *United States*, 333 U.S. 10 (1948), does not suggest otherwise. In *Johnson*, the Court assumed that officers lacked probable cause to effect the warrantless arrest of an individual when she answered the door to a hotel room in which the odor of opium had been detected. *Id.* at 15-17. The officers had no knowledge at that time whether she was alone in the room or with numerous other persons; and they evidently did not know whether she was present in the room while opium was being smoked there, or whether, if present, she was one of the persons smoking it. See *id.* at 16. Here, respondent was known to be one of three passengers in an automobile at a time when a commercial amount of cocaine was present in the passenger compartment. Moreover, *Johnson* addressed whether there was probable cause for the warrantless arrest of an individual following a nonconsensual entry into her residence; and it is now settled that, regardless of probable cause, the police ordinarily must obtain a warrant before making a nonconsensual entry into a residence to effect an arrest. *Payton* v. *New York*, 445 U.S. 573 (1980). Cf. *Chambers* v. *Maroney*, 399 U.S. 42, 52 (1970) ("for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars").

B. The Approach Of The Maryland Court Of Appeals Gives Inadequate Weight To Legitimate Law Enforcement Interests

The "Fourth Amendment accepts [the] risk" that "persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent." *Illinois* v. *Wardlow*, 528 U.S. 119, 126 (2000). That is a necessary cost of ensuring the effective detection and prosecution of crime. As this Court has explained, "innocent behavior frequently will provide the basis for a showing of probable cause; to require otherwise would be to *sub silentio* impose a drastically more rigorous definition of probable cause than the security of our citizens[] demands." *Gates*, 462 U.S. at 244 n.13.

The probable cause standard balances society's interest in affording law enforcement officers "fair leeway

for enforcing the law in the community's protection" against the competing interest in protecting "citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." *Brinegar* v. *United States*, 338 U.S. 160, 176 (1949). The Maryland Court of Appeals struck that balance in a manner that "unduly hamper[s] law enforcement." *Ibid.*

1. a. An officer faced with the discovery of a commercial amount of cocaine in the passenger compartment of a car knows that a crime has been committed and knows to a near certainty that some or all of the passengers are the guilty parties. The law enforcement interest in permitting an arrest is especially strong in that situation, and the competing concern with arrests based on "whim or caprice" (*Brinegar*, 338 U.S. at 176) is limited.

When there is no doubt that a crime has been committed, the interest in effective enforcement of the law is pronounced. See Model Code of Pre-Arraignment Procedure § 120.1 cmt., at 296 (1975) (Model Code) ("[I]t is necessary to distinguish between cases where there is substantial doubt about whether a crime has been committed at all, and cases where the doubt relates to the identity of the offender.").[11] In the context of

[11] See also 2 LaFave, *supra*, § 3.2(e), at 70 (explaining that there "may be * * * a basis for being more demanding [in applying the probable cause standard] with respect to the existence of criminal activity than with respect to the identity of the perpetrator of a known crime"). The application of the privilege of arrest at common law reflected such a distinction. Whereas the privilege was unavailable to a private individual who made an arrest based on an erroneous suspicion that a felony had been committed, it was available to an individual who was correct in believing that a felony had been committed but who arrested the wrong person. See 1 Restatement (Second) Torts § 119 cmt. h, at 196 (1965).

narcotics trafficking, moreover, the crime is likely part of a continuing pattern rather than an isolated incident, magnifying the interest in facilitating arrest and prosecution to prevent future offenses.

As for the identity of the parties responsible for the drugs in the car, because the class of suspects consists only of the current passengers and because of the virtual certainty that some or all of them bear responsibility, the concern with protecting against unreasonable arrests of innocent citizens is substantially mitigated. See 2 LaFave, *supra*, § 3.2(e), at 68 (observing that the "degree of certainty that the actual offender is within the group" bears on probable cause); *id.* at 71 (explaining that "existence of known criminal activity," as opposed to uncertainty about whether a crime has occurred, "serves to provide an anchor or touchstone, in a time-space sense, which limits the police arrest authority"). A particular passenger may ultimately prove innocent of association with the drugs. But the balance of interests favors allowing an arrest of the vehicle's occupants. See *Houghton*, 526 U.S. at 305 ("[T]he balancing of interests must be conducted with an eye to the generality of cases.").

b. When, as in this case, it is certain that a crime has been committed and the group of legitimate suspects is both small in number and likely to include the actual offender, the probable cause standard would permit the arrest of all of them even absent any inference that more than one was involved—*i.e.*, even if there is a strong likelihood of the arrest of persons who in fact are innocent. The interest in ensuring the ability to appre-

hend and prosecute the actual offender justifies multiple arrests in that situation. See Model Code 295 (explaining that there is "good authority" for arresting "two or more persons, not believed to be accomplices," for "the same offense"). The Restatement of Torts illustrates the point through an example:

> A sees B and C bending over a dead man D. B and C each accuse the other of murdering D. A is not sure that either B or C did the killing, but he has a reasonable suspicion that either B or C killed D. A is privileged to arrest either or both.

1 Restatement (Torts) Second § 119 ill. 2, at 198 (1965); see 4 LaFave, *supra*, § 9.4(b), at 150-151 (describing "the classic case in which a man is shot in the back in a locked room and the two persons present at the time accuse each other," and concluding that "it would seem that both suspects might be arrested").[12]

In this case, consequently, even if the circumstances had led Officer Snyder to believe that one (and only one) of the three passengers could have been associated with the cocaine, he had probable cause to arrest all three and to identify the guilty party through further investigation: each of the three was within reach of the drugs and the roll of cash, and no affirmative reason existed to dismiss any of them as a suspect. Cf. *Iowa* v. *Horton*, 625 N.W.2d 362, 367 (Iowa) (rejecting notion that "probable cause is finite and, if it is expended on

[12] The rule described in the Restatement is a longstanding one in the common law. See 1 Restatement (First) Torts § 119, ill. 2, at 254 (1934) (invoking the same example). This Court frequently relies on common law principles in determining the contours of the Fourth Amendment. See, *e.g.*, *Houghton*, 526 U.S. at 299-302; *Wilson* v. *Arkansas*, 514 U.S. 927, 931 (1995).

one suspect, there cannot be enough left for another suspect") (internal quotation marks and citation omitted), cert. denied, 534 U.S. 928 (2001).

2. The approach of the Maryland Court of Appeals requires too much of officers at the scene and leaves them insufficient discretion to respond effectively to a known crime.

a. To begin with, the court assumed that Officer Snyder was required before making an arrest to weigh the evidence supporting each element of the drug possession charges ultimately brought against respondent. See Pet. App. 8a, 21a. In the court's view, the evidence apparent to Officer Snyder of the elements of "knowledge" and "dominion or control" did not suffice to justify an arrest. *Id.* at 21a. That approach is inconsistent with the admonition that the probable cause standard is a "practical, nontechnical conception," *Brinegar*, 338 U.S. at 176, that deals in the considerations of "reasonable and prudent men, not legal technicians," *id.* at 175.

Requiring police officers at the scene to sort through the elements of uncharged offenses unduly impairs their ability to take resolute action in the face of concrete evidence of crime. An officer deciding whether to make a warrantless arrest frequently confronts an uncertain and evolving situation. See Model Code 294. The probable cause standard is a correspondingly "fluid concept." *Gates*, 462 U.S. at 232. Accordingly, an officer need not identify a specific offense that he believes has been committed before deciding to arrest, see Model Code 296-297; 2 LaFave, *supra*, § 3.2(e), at 72, let alone wrestle with the various elements of an offense. See *Adams* v. *Williams*, 407 U.S. 143, 149 (1972) ("Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction.").

The responsibility for analyzing specific offense elements and weighing the evidence of particular crimes lies principally with the prosecutor in arriving at a charging decision and with the finder of fact in reaching a determination on guilt. The purpose of an officer's antecedent decision to arrest "is to take the person into custody so that the determination can be made whether or not to charge the arrested person with crime." Model Code 294. In this case, respondent's proximity to the cocaine and the roll of money, coupled with common-sense inferences about the situation, afforded Officer Snyder ample cause for suspecting respondent's involvement in some capacity with the drugs.[13]

b. The approach of the Maryland Court of Appeals disables officers from responding effectively to the discovery of narcotics in an automobile. Both the court (Pet. App. 2a, 21a, 23a) and respondent (Br. in Opp. 7-8) appear to assume that officers could arrest the driver or owner of the car as opposed to a "mere passenger." In many situations, however, the driver or owner may not be the most obvious suspect. The emphasis on those individuals stems from the belief that, because they have a measure of control over the vehicle, they may be more likely responsible for contraband secreted within it. If the driver alone were associated with the contraband, however—as is presumed by an approach that would allow only his arrest but not that of a "mere passenger"—one would expect the driver to conceal the

[13] In any event, even with respect to the particular offense elements of knowledge and control, the location of the drugs and roll of money within respondent's reach presented strong circumstantial evidence that he was aware of the presence of the cocaine and could exercise constructive control over it. See *Allen*, 442 U.S. at 164.

contraband in a location entirely inaccessible to the other passengers (such as in a locked container in the trunk), rather than to leave it in the passenger compartment subject to discovery by the other occupants. For that reason, perhaps the least likely scenario when drugs are found behind the rear seat armrest is that the driver acted alone.

Insofar as respondent or the Maryland Court of Appeals would also allow the arrest of the passenger seated closest to the contraband, that approach, too, would be unsound. If only one person were in the car, probable cause ordinarily would exist for his arrest if drugs were found somewhere in the passenger compartment within his reach. It would make little sense to preclude the arrest of that same person when drugs are found in exactly the same location simply because an additional passenger is seated more closely to the contraband—especially given that the two may well be jointly associated with the drugs. Moreover, an analysis pinned on an individual's relative distance from contraband would encourage the passenger with immediate control over the drugs to deposit them in the vicinity of another passenger in the event of a traffic stop, thereby potentially insulating from arrest the individual most clearly in control of the drugs. Cf. *Houghton*, 526 U.S. at 305 (observing that a passenger could surreptitiously hide contraband in another passenger's belongings).

Finally, insofar as respondent or the Maryland Court of Appeals might mean to suggest that no one may be arrested when officers are unable to determine with confidence that any specific passenger was responsible for the drugs, that conclusion could not be squared with the common-sense inference that probably all—and certainly some—of the passengers are associated with

the contraband. That approach would also give automobile passengers involved in drug trafficking a ready recipe for mutually avoiding arrest. The better approach is to permit an officer to examine the totality of circumstances and to arrest all of the passengers if the situation warrants it. Although an innocent passenger may be arrested in particular cases, the probable cause standard presumes that "room must be allowed for [such] mistakes." *Brinegar*, 338 U.S. at 176. And when that occurs, the arrests frequently, as in this case, will facilitate further investigation that enables the officer to conclude in short order that a particular passenger should be released.

CONCLUSION

The judgment of the Court of Appeals of Maryland should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

—v.—

JOSEPH JERMAINE PRINGLE,

Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

BRIEF *AMICI CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION, THE ACLU OF MARYLAND, AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with approximately 400,000 members dedicated to the principles of liberty and equality embodied in the Bill of Rights. The ACLU of Maryland is one of its statewide affiliates. Since its founding in 1920, the ACLU has frequently appeared before this Court, both as direct counsel and as *amicus curiae*. In particular, the ACLU has participated in cases addressing the proper scope of the Fourth Amendment.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit corporation founded in 1958 to ensure justice and due process for persons accused of crime; to foster integrity, independence, and expertise of the criminal defense bar; and to promote the fair administration of criminal justice. NACDL strives to defend the liberties guaranteed by the Bill of Rights, and is recognized by the American Bar Association as an affiliate organization.

STATEMENT OF THE CASE

On August 7, 1999, at 3:16 a.m., Officer Jeffrey Snyder of the Baltimore County Police Department stopped a car for speeding and for the driver's failure to wear a seatbelt. Inside the vehicle were: Donte Partlow, the driver and owner of the car; respondent Joseph Pringle, who was seated in the front passenger seat; and Otis Smith, who was seated in the backseat. When Partlow opened the glove compartment to retrieve his registration, the officer noticed a large roll of money. After determining that there were no outstanding

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored this brief in whole or in part and no person, other than *amici*, its members or its counsel made a monetary contribution to the preparation or submission of this brief.

violations or warrants for Partlow, the officer gave Partlow, who was standing outside the vehicle, a verbal warning.

Officer Snyder then asked for and received Partlow's consent to search the car. All three men were frisked, and asked to sit on the curb. The search disclosed $763 from the glove compartment and five glassine plastic baggies containing cocaine that were hidden from view in the backseat armrest. JA 33, 40-41. Officer Snyder questioned the men separately about the drugs and told them that unless he was told who possessed the drugs, "you are all going to get arrested." JA 47. None of the men offered any information regarding the money or drugs, and all were arrested. Two hours later at the police station, respondent confessed to owning the cocaine. Respondent told Officer Snyder that Partlow and Smith did not know or have anything to do with the money or drugs. JA 25. Partlow and Smith were later released.

Respondent was charged with possession of cocaine and with possession with intent to distribute cocaine. The trial court denied his motion to suppress, and the Maryland Court of Special Appeals affirmed. The Maryland Court of Appeals reversed the appellate court's ruling, and held there was no probable cause to arrest respondent. The court explained that the facts did not show that respondent had knowledge and dominion or control over the drugs. Pet. App. 21a. Accordingly, the court held that "a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." *Id.* at 23a.

This Court granted certiorari to decide the following question: Where drugs and a roll of cash are found in the passenger compartment of a car with multiple occupants, and

all deny ownership of those items, is there probable cause to arrest all occupants of the car?

SUMMARY OF ARGUMENT

"Individualized" or "particularized" suspicion targeting a place, person or thing, is an essential component of probable cause. Probable cause to arrest exists when an officer has an individualized suspicion that singles out a person or persons for arrest. Officer Snyder did not have probable cause to arrest respondent. His testimony reveals that after he found the hidden cocaine, he separately questioned the men to determine who owned the cocaine. After the interrogations failed to identify who owned the cocaine, the officer told the men that unless he was informed about "whose drugs these are," "you are all going to get arrested." JA 45, 47. When this strategy failed, the officer arrested everybody. Although Officer Snyder may have thought that arresting everyone was a neutral response since he could not determine who owned the cocaine, "evenhanded treatment was no substitute for the individualized suspicion requirement." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 668 (1995) (O'Connor, J., dissenting).

The individualized or particularized suspicion requirement "has a legal pedigree as old as the Fourth Amendment itself." *Id.* at 678 (O'Connor, J., dissenting). During the pre-Revolutionary era, individualized suspicion was an essential ingredient of a lawful search or seizure because without it, officers would have the discretion to intrude at will. Before the Fourth Amendment was ratified, a particularized suspicion requirement was inherent in the operative common-law rule for warrantless arrests. For a felony not committed in his presence, a constable could justify an arrest only upon proof that a "felony in fact" had occurred, and that there was probable cause of suspicion to

think that a particular person, the arrestee, committed the offense.

This Court has also recognized the constitutional status of "individualized probable cause." In most cases, the individualized suspicion requirement is satisfied, and the existence of probable cause turns on other factors. *See, e.g., Illinois v. Gates*, 462 U.S. 213 (1983) (anonymous letter naming suspects and specifying their *modus operandi* for transporting drugs provided particularized suspicion for focusing on suspects). Occasionally, however, probable cause for a search or arrest does not exist due to the absence of individualized suspicion. *See Ybarra v. Illinois*, 444 U.S. 85 (1979); *United States v. Di Re*, 332 U.S. 581 (1948). In these cases, mere presence with others independently suspected of criminality does not, by itself, provide probable cause for a search or arrest. "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause *particularized with respect to that person*." *Ybarra*, 444 U.S. at 91 (emphasis added).

In this case, respondent's mere presence as a passenger in a car that contained hidden drugs did not provide sufficient information to arrest respondent. Respondent made no gestures indicative of criminal conduct, made no furtive movements suggesting an attempt to conceal or destroy contraband, and made no suspicious comments to Officer Snyder. Under these circumstances, a dragnet arrest "was no substitute for the individualized suspicion requirement." *Acton*, 515 U.S. at 668 (O'Connor, J., dissenting).

Petitioner's argument that "when multiple occupants are present in a car containing illegal drugs, a common sense inference can be drawn that any or all of the occupants have knowledge of the drugs in the car," Br. Pet. 17, is unsound for several reasons. First, it ignores the critical fact that the drugs found by Officer Snyder were *not* in the plain view of

the officer or the occupants of the vehicle. Second, petitioner's logic effectively creates a *per se* rule that allows police to arrest everyone on the scene where hidden contraband is found in confined spaces. This rule cannot be limited to automobiles and will adversely impact the liberty and privacy interests of innocent people who are unwittingly present in cars and private premises that contain concealed contraband. Finally, the thrust of petitioner's argument would *sub silento* overrule *Ybarra* and *Di Re*.

Petitioner's position is not supported by the holding – as opposed to the dicta – in *Wyoming v. Houghton*, 526 U.S. 295 (1999). *Houghton* concerned the scope of the "automobile exception," and reaffirms *Di Re*'s controlling principle. Moreover, *Houghton* states that the "traumatic consequences" of a personal search are not to be visited upon a passenger due to his mere presence in a suspected vehicle. *Id.* at 303. If a passenger cannot be subjected to the "traumatic consequences" of a personal search, there is no legal justification for subjecting a passenger to the far greater consequences of an arrest. The judgment below addressed only the lawfulness of respondent's arrest as a mere passenger. Whether probable cause exists to arrest the driver or owner of a vehicle under similar or different facts, is a question the Court need not address in this case.

ARGUMENT

I. INDIVIDUALIZED OR PARTICULARIZED SUSPICION IS AN ESSENTIAL ELEMENT OF PROBABLE CAUSE

Years before James Madison proposed "probable cause" as the quantum of evidence needed for a valid warrant,[2] the colonists and Framers of our Constitution

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[2] *See* Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 703 (1999) (explaining that "'probable cause' *alone*

recognized that searches and seizures were unreasonable if conducted without particularized or individualized suspicion. During the years leading up to the adoption of the Constitution, the colonists widely denounced intrusions that lacked particularized suspicion. *See* William Cuddihy, *The Fourth Amendment: Origins and Original Meaning* 1402 (1990) (unpublished Ph.D. Dissertation, Claremont Graduate School). These protests demonstrated that "the individualized suspicion requirement has a legal pedigree as old as the Fourth Amendment itself." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 678 (1995) (O'Connor, J., dissenting). Individualized suspicion was an essential element of a reasonable search or seizure because without a particularized basis for an intrusion, search and seize authority would be left to the discretion of ordinary officers.

The Fourth Amendment reflected the Framers' condemnation of governmental intrusions lacking particularized suspicion. The intrusions that most troubled the Framing generation were broad, suspicionless *searches*. Davies, *supra* at 590 & 601. On the other hand, *arrest* authority was less troubling because common-law rules established strict limits on an officer's power to arrest. "Except for the vicarious concerns over the use of general warrants for arrests in connection with the English Wilkesite cases, which involved both arrests and searches of houses and papers, the pre-Revolutionary controversies were devoid of any consideration of arrest authority." *Id.* at 601. The absence of protest about a constable's warrantless arrest authority is understandable because the "Framers understood that justifications for warrantless arrests and accompanying searches were quite limited," and they "did *not* perceive the

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was not the common-law standard for criminal warrants; [the] common-law required that arrest or search warrants had to be based on an allegation of an offense or theft 'in fact' as well as 'probable cause of suspicion' as to a *particular person* to be arrested or place to be searched") (emphasis added).

peace officer as possessing any significant *ex officio* discretionary arrest or search authority." *Id.* at 640; *see also*, *id.* at 641 ("The bottom line is that the Framers perceived warrant authority as the salient mode of arrest and search authority."). Indeed, a particularized suspicion requirement was intrinsic to the common-law rules regarding warrantless arrests.

As Professor Thomas Davies explains, the "operative common-law justification for a warrantless arrest" in American law in 1789 was the "felony in fact" rule. Davies, at 632. Under this rule, an officer could justify an arrest "only upon proof that a 'felony in fact' had actually been committed by someone and that there was 'probable cause of suspicion' to think the arrestee was that person." *Id.* at 632. The "felony in fact" rule imposed substantial limitations on arrest authority. *See Id.* at 706 (describing the result in *Ex parte Bollman*, 8 U.S. (4 Cranch) 75 (1807)). Arrests based solely on probable cause were impermissible.[3] Not only did the officer have to know that a "felony in fact" had been committed, but he also needed probable cause of suspicion to think that a particular person – the arrestee – committed the crime.

A. This Court's Precedents Establish That Particularized Suspicion is a Necessary Element of Probable Cause

While the "legal pedigree" of the individualized suspicion requirement is confirmed by historical evidence, *Acton*, 515 U.S. at 678 (O'Connor, J., dissenting), the

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[3] The authority to arrest on probable cause alone was established in England in 1827, long after the Fourth Amendment had been ratified. *See Beckwith v. Philby*, 108 Eng. Rep. 585 (1827). The "first American reported decisions to endorse the [standalone] probable cause standard for warrantless arrests by officers were the 1844 Pennsylvania decision *Russell v. Shuster*, [8 Watts & Serg. 308 (Pa. 1844)] and the 1850 Massachusetts decision *Rohan v. Sawin*, [59 Mass. (5 Cush.) 281 (1850)]." Davies, at 636-37 (footnotes omitted).

constitutional status of this legal norm has also been recognized by this Court. For half a century, this Court's "probable cause" jurisprudence demonstrates that individualized suspicion is necessary to make a search or seizure reasonable.

1. Probable Cause to Arrest or Search Requires Particularized Suspicion Directed at the Target of the Intrusion

Probable cause exists where police have sufficient information to justify singling out a person or persons for search or seizure. In many of the cases decided by this Court, the individualized suspicion requirement is satisfied, and the existence of probable cause *vel non* turns on other factors. For example, in *Carroll v. United States*, 267 U.S. 132 (1925), federal law enforcement officers had particular reason to focus on "the Carroll boys" because they had offered to sell liquor to the officers on a previous occasion and because shortly after that proposed sale, the officers had observed the suspects heading to Detroit, which the Court assumed to be "one of the most active centers for introducing illegally into this country spirituous liquors for distribution into the interior." *Id.* at 160. The probable cause determination in *Carroll* turned on whether the officers had probable cause to search the suspects' vehicle when, "[t]wo months later these officers suddenly met the same men on their way westward presumably from Detroit." *Id.* Similarly, in *Brinegar v. United States*, 338 U.S. 160 (1949), a federal agent possessed individualized suspicion directed at Brinegar because the agent "had arrested [Brinegar] about five months earlier for illegally transporting liquor; had seen [Brinegar] loading liquor into a car or truck in Joplin, Missouri, on at least two occasions during the preceding six months; and knew [Brinegar] to have a reputation for hauling liquor." *Id.* at 162. The question of probable cause focused on whether the agent had sufficient evidence to search Brinegar's car when he saw the vehicle heading for the Oklahoma border

and it "appeared to be 'heavily loaded' and 'weighted with something.'" *Id.* at 163. Finally, in *Illinois v. Gates*, 462 U.S. 213 (1983), police had particularized suspicion focusing on the Gateses because an anonymous letter had accused them of drug trafficking and specified in detail their *modus operandi*. The existence of probable cause *vel non* turned on whether the police corroboration of the letter's predictions was sufficient to prove the reliability and basis of knowledge of the informant's allegations.

Carroll, *Brinegar*, and *Gates* illustrate the typical probable cause case where police have particularized suspicion for focusing on a specific person or persons. A different (and less frequently seen) type of probable cause case exists where police are investigating a known crime or have information amounting to probable cause of criminality, but lack individualized suspicion for searching or arresting a particular individual or persons. *United States v. Di Re*, 332 U.S. 581 (1948), was the first case to address the meaning of probable cause in these circumstances. In *Di Re*, an informant, Reed, told a federal investigator that he planned to purchase counterfeit gasoline coupons from Buttitta. Accompanied by a Buffalo police detective, the investigator followed Buttitta's car to the identified locale. The officers approached the car and observed Reed in the backseat holding the counterfeit coupons. Reed told the officers that Buttitta had given him the coupons. Buttitta occupied the driver's seat, and Di Re sat next to Buttitta. All three men were arrested. A search of Di Re's person at the police station disclosed one hundred coupons in an envelope concealed between his shirt and underwear.

The government defended the search of Di Re on two grounds. First, the government asserted the search was reasonable because the officers had probable cause to search the car itself. The government asked the Court "to extend the assumed right of car search [announced in *Carroll*] to include the person of occupants because 'common sense demands

that such right exist in a case such as this where the contraband sought is a small article which could easily be concealed on the person.'" *Id.* at 586. The Court rejected this argument stating that Di Re's mere presence in a vehicle suspected of holding contraband did not provide cause to justify a search of *his* person. *Id.* at 587 ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would be entitled.").

Alternatively, the government argued that the search of Di Re was justified as incident to a lawful arrest. The government defended the arrest on the theory that Di Re's presence in the car gave the officers probable cause to believe that Di Re was involved in a conspiracy to possess counterfeit coupons. The Court rejected this argument explaining:

> The argument that one who "accompanies a criminal to a crime rendezvous" cannot be assumed to be a bystander, forceful enough in some circumstances, is farfetched when the meeting is not secretive or in a suspicious hide-out but in broad daylight, in plain-sight of passers-by, in a public street of a large city, and where the alleged substantive crime is one which does not necessarily involve any act visibly criminal.... Presumptions of guilt are not lightly to be indulged from mere meetings.

Id. at 593. The Court then noted that "whatever suspicion" might attach to Di Re's "mere presence seems diminished, if not destroyed," *id.* at 594, when Reed failed to implicate Di Re, as he did Buttitta, as part of the conspiracy. "Any inference that everyone on the scene of a crime is a party to it must disappear if the Government informer singles out the guilty person." *Id.*

Decided in the same year as *Di Re*, *Johnson v. United States*, 333 U.S. 10 (1948), addressed the meaning of probable cause in situations where "police are investigating a known crime and obtain information concerning the offender which does not point exclusively to one particular individual." 2 Wayne R. LaFave, SEARCH AND SEIZURE § 3.2 (e) at 60 (3d ed. 1996). In *Johnson*, officers received a tip from a confidential informant that unknown persons were smoking opium at a hotel. When the officers arrived at the hotel, they smelled burning opium and traced the odor to a particular room. After Johnson acquiesced to the officers' entry, they arrested Johnson and discovered incriminating evidence in her room.

This Court first ruled that the entry into Johnson's room was illegal because there was no exigency or other justification for proceeding without a warrant. 333 U.S. at 14-15. The Court then addressed the government's contention that the "search without warrant must be valid because incident to an arrest." *Id.* at 15. This issue required determining whether "a crime [had been] committed in the presence of the arresting officer or for a felony of which he had reasonable cause to believe [Johnson] guilty." *Id.* (footnote omitted). The government argued that once the officers had discovered that Johnson was the only person in the room, they had probable cause to make an arrest. This argument, according to the Court, sought "to justify the arrest by the search and at the same time to justify the search by the arrest." *Id.* at 16-17. The Court found this logic unsound. The constitutional flaw in the government's argument was that the officers "did not have probable cause to arrest [Johnson] until [they] entered her room and found her to be the sole occupant." *Id.* at 16. In other words, while the officers had probable cause to search the room, *id.* at 13, they arrested Johnson before actually finding the opium and thus did not have a particularized suspicion that Johnson possessed opium until *after* her arrest and the search of her room. *See* 2

LaFave, *supra*, § 3.2(e), at 61 (noting that *Johnson* "suggests that probable cause to arrest does not exist unless the information at hand singles out one individual").[4]

Di Re and *Johnson* established that police are not free to arrest or search everyone found at the scene of a crime. *Wong Sun v. United States*, 371 U.S. 471 (1963), reinforced the rulings in *Di Re* and *Johnson* that probable cause of criminality does not justify police practices that amount to dragnet searches or arrests.[5] In *Wong* Sun, an informant told federal narcotics agents that he had recently purchased heroin from "Blackie Toy," who was the owner of a laundry somewhere on Leavenworth Street in San Francisco. The agents arrived at "Oye's Laundry," which was operated by defendant James Wah Toy. After an undercover agent knocked on the door, Toy appeared and opened the door. Toy declined to discuss laundry with the agent and started to close the door when the agent identified himself as a federal narcotics agent. Toy ran away but was eventually captured and arrested.

The "threshold question" in *Wong Sun* was whether the officers could, "on the information which impelled them to act, have procured a warrant for the arrest of Toy." 371 U.S. at 480. The Court ruled that the officers lacked probable cause to arrest Toy:

> The narcotics agents had no basis in experience for confidence in the reliability of [the informant's] information; he had never before given information. And yet they acted upon his imprecise suggestion that a person described only as "Blackie Toy," the proprietor of a laundry somewhere on Leavenworth Street, had sold one ounce of heroin.... For aught that the record discloses, [the informant's] accusation merely invited the officers to roam the length of Leavenworth Street (some 30 blocks) in search of one "Blackie Toy's" laundry – and whether by chance or other means (the record does not say) they came upon petitioner Toy's laundry, which bore not his name over the door, but the unrevealing label "Oye's." Not[hing] ... suggest[s] that the agents had information

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[4] Petitioner does not cite *Johnson*, but the United States does. *See* Br. U.S. 22, n. 10. The United States suggests that *Johnson*'s holding is irrelevant to this case because the *Johnson* Court "*assumed* that officers lacked probable cause to effect the warrantless arrest of an individual when she answered the door to a hotel room in which the odor of opium had been detected." *Id.* (citation omitted) (emphasis added). This is a curious description of the second issue addressed in *Johnson*, particularly in light of the fact that the government's brief in *Johnson* asked the Court to decide:

> "Whether there was probable cause for the arrest of petitioner for possessing opium prepared for smoking and the search of her room in a hotel incident thereto for the contraband opium, where experienced narcotic agents unmistakably detected and traced the pungent, identifiable odor of burning opium emanating from her room and knew, before they arrested her, that she was the only person in the room."

Johnson, 333 U.S. at 16, n.6.

[5] Prior to *Wong Sun*, the Court never questioned the correctness of its holdings in *Di Re* and *Johnson*. In fact, in *Mallory v. United States*, 354 U.S. 449 (1957), a unanimous Court remarked:

> Presumably, whomever the police arrest they must arrest on "probable cause." It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on "probable cause."

Id. at 456. Of course, petitioner and its *amici* are asking this Court to approve the same procedure that *Mallory* condemned. See Br. Pet. 25 ("By arresting all three, the officer more precisely could determine criminal culpability. Pringle confessed, and the other two were set free."); Br. U.S. 30 (conceding that innocent persons may be arrested, but insisting that arresting all the vehicle's occupants "will facilitate *further investigation* that enables the officer to conclude in short order that a particular passenger should be released") (emphasis added).

> giving them reason to equate "Blackie" Toy and James Wah Toy, or that they had consulted some other kind of official record or list, or had some information of some kind which had narrowed the scope of their search to this *particular* Toy.

Id. at 481 (emphasis added). *Wong Sun* also explained that the Warrant Clause's particularity requirement "applies both to arrest and search warrants." *Id.* at 481, n. 9. Although the agents acted without a warrant, the Court stated that no warrant could have issued had the agents sought one.

> A description of a suspect merely as "Blackie Toy," operator of a laundry somewhere on Leavenworth Street, hardly is information "particularly describing...the person...to be seized." Such information is no better than the wholesale or "dragnet" search warrant, which we have condemned.

Id.

Di Re, *Johnson* and *Wong Sun* involved warrantless searches and arrests. Although car searches and arrests are not controlled by the Warrant Clause, in these cases the Court concluded that the same particularity that is required when police intrude pursuant to a search warrant is also required when police act without a warrant. *Ybarra v. Illinois*, 444 U.S. 85 (1979), involved a valid search warrant of a tavern and a bartender for narcotics. It was argued, *inter alia*, that the existence of a valid warrant eliminated the requirement that police have individualized suspicion with respect to each person subject to search.[6] The Court rejected that argument. The Court reiterated that individualized

[6] *See Ybarra*, 444 U.S. at 107 (Rehnquist, J., dissenting) ("in place of the requirement of 'individualized suspicion' as a guard against arbitrary exercise of authority, we have here the determination of a neutral and detached magistrate that a search was necessary").

suspicion was an essential component of probable cause, and thirty years after *Di Re* was decided, endorsed the principle announced in that case that police may not search or arrest everyone found at the scene of a crime, even when the intrusion may "facilitate further investigati[ve]," Br. U.S. 30, purposes of the police.

Ybarra was a patron of a tavern when the police arrived to execute the warrant. A search of Ybarra revealed narcotics. The Court addressed two issues in *Ybarra* pertinent to this case. First, the Court rejected the claim that the police had probable cause to search Ybarra. Concededly, the warrant permitted a search of the premises and Ybarra was on the premises at the time of the search.

> But, a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. Where the standard is probable cause, a search or seizure of a person must be supported by probable cause *particularized with respect to that person*. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be.

444 U.S. at 91 (emphasis added). The Court explained that each patron in the tavern was "clothed with constitutional protection," and that "individualized protection was separate and distinct" from the protection possessed by the owner of the tavern and the bartender. *Id.* Accordingly, the valid warrant to search the premises and the bartender provided the police "no authority whatever to invade the constitutional protections possessed individually by the tavern's customers." *Id.* at 92.

The other issue addressed in *Ybarra* concerned the state's claim that the reasonable suspicion standard of *Terry v. Ohio*, 392 U.S. 1 (1968), should be extended to promote the evidence-gathering function of a search warrant. In an argument reminiscent of the petitioner's position in this case, the State of Illinois urged the Court "to permit evidence searches of persons who, at the commencement of the search, are on 'compact' premises subject to a search warrant, at least where the police have a 'reasonable belief' that such persons 'are connected with' drug trafficking and 'may be concealing or carrying away the contraband.'" *Ybarra*, 444 U.S. at 94. The Court's response was telling: "Over 30 years ago, [we] rejected a similar argument in *United States v. Di Re*." *Id.* at 94. There were obvious differences between *Di Re* and *Ybarra*. For example, the officers in *Di Re* lacked a search warrant, whereas the police in *Ybarra* had one. *Di Re* involved a car and *Ybarra* involved a tavern. Also, the State of Illinois did not concede, as the United States did in *Di Re*, that a valid search warrant for a house would not authorize the search of all persons found in the house. Despite these differences, the *Ybarra* Court concluded that "the governing principle in both cases is basically the same, and we follow that principle today." *Id.* at 95. That principle – controlling in *Di Re*, *Ybarra* and this case – is that probable cause requires sufficient information – particularized suspicion – that justifies singling out the target of the police intrusion.

II. THERE WAS NO PROBABLE CAUSE TO ARREST RESPONDENT ON THE FACTS OF THIS CASE

When all is said and done, the petitioner's argument rests on either of two propositions, neither of which is sustainable. First, petitioner contends there was probable cause to arrest respondent because the facts provided an individualized suspicion to arrest *all* of the occupants of the

car. Second, petitioner appears to be asserting that police may arrest *everyone* inside a car when drugs are found hidden inside the vehicle even absent a particularized suspicion that any one or all the occupants may have known about the drugs. *See* Br. Pet. 25 ("Under the circumstances of the car stop here, unlike the situations in *Di Re* and *Ybarra*, suspicion did not focus on a particular individual to the exclusion of others. Because the drugs were found not on the person of anyone, but behind the armrest within the easy grasp of the three occupants, there was probable cause to arrest [everyone]."). *See also* Br. U.S. 26 ("In this case, consequently, even if the circumstances had led Officer Snyder to believe that one (and only one) of the three passengers could have been associated with the cocaine, he had probable cause to arrest all three and to identify the guilty party through further investigation."). The latter proposition is not sustainable because *Di Re* and *Ybarra* have already established that mere propinquity to *hidden* contraband does not constitute probable cause to justify an arrest or search.

Officer Snyder did not have probable cause to arrest respondent. Although Officer Snyder was investigating a known crime and had probable cause for a further search of the vehicle, he had no individualized basis for arresting respondent. "[Respondent] made no gestures indicative of criminal conduct, made no movements that might suggest an attempt to conceal contraband, and said nothing of a suspicious nature to the police officer[]." *Ybarra*, 444 U.S. at 91. As in *Ybarra* and *Di Re*, Officer Snyder "knew nothing in particular" about respondent, *Id.* at 91, except that he was present, along with two other occupants, in an automobile that the police knew contained illegal drugs. A person's mere presence in a suspected vehicle, however, does not constitute probable cause to search or arrest that individual. "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with

respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be." *Id.*; *see also Di Re*, 332 U.S. at 587 ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled."); *id.* at 593 ("presence of Di Re in the car did not authorize an inference of participation" in the conspiracy to justify his arrest). A dragnet arrest "was no substitute for the individualized suspicion requirement." *Acton*, 515 U.S. at 668 (O'Connor, J., dissenting). The definition of "probable cause" stated in *Ybarra* has not changed.

Petitioner insists, however, that "when multiple occupants are present in a car containing illegal drugs, a common sense inference can be drawn that any or all of the occupants have knowledge of the drugs found in the car." Br. Pet. 17. *See also* Br. U.S. 15 ("[T]he presence of drugs – without more – immediately reveals criminal activity.... [T]he discovery of an amount of narcotics suitable for distribution in the passenger compartment supports an inference that all of the car's occupants were aware of, and hence involved with, the drugs."). This argument is flawed for several reasons. First, it ignores the critical fact that the drugs found by Officer Snyder were *not* in the plain view of the occupants of the automobile. Second, the logic of petitioner's position effectively creates a *per se* rule that police discovery of contraband that is *not in plain view* provides probable cause to arrest everyone on the scene. This rule cannot be confined to "car" cases. Finally, the reasoning of *Wyoming v. Houghton* undermines petitioner's argument. *Houghton* states that the "traumatic consequences" of a personal search are not to be visited upon a passenger due to his mere presence in a suspected vehicle. *Houghton*, 526 U.S. at 303. If respondent could not be subjected to the "traumatic

consequences" of a personal search, there is no legal justification for subjecting him to the far greater "traumatic consequences" of an arrest.

A. The Discovery of Drugs Hidden Inside a Vehicle Does Not Provide Probable Cause to Arrest All of the Occupants

It is undisputed that the money and cocaine discovered by Officer Snyder were not in the plain view of the occupants of the vehicle. JA 33, 40-41. Moreover, the ruling below that there was no probable cause to arrest respondent specifically rested on the fact that the money and cocaine were hidden from view. Pet. App. 2a., 22a-23a.

Petitioner's contention that there was, nonetheless, probable cause to arrest respondent simply because he was in a car where drugs were found is contradicted by this Court's holding in *Di Re*. One of the factors relied upon by *Di Re* in rejecting the inference that there was probable cause to arrest Di Re was the fact that "the alleged substantive crime is one which does not necessarily involve any act *visibly* criminal." *Di Re*, 332 U.S. at 593 (emphasis added). Here, "the alleged substantive crime" was not conduct visible to the occupants of the car or Officer Snyder.[7] Furthermore, as in *Di Re*, "[t]here is no evidence . . . that [Officer Snyder] had any

[7] Perhaps in an effort to avoid this aspect of *Di Re*, the United States speculates that the cocaine was somehow, at sometime, visible to everyone in the vehicle, or that Officer Snyder could have made such an inference. See Br. U.S. 17 ("And the discovery of the drugs behind the armrest rather than in a more secreted location suggested that the cocaine had been in *plain view* of the passengers but was hastily lodged between the armrest and the seat during the traffic stop.") (emphasis added); *id.* at 22 ("the possession in a car of a commercial quantity of cocaine 'necessarily involve[s] an[] act *visibly* criminal to passengers who *observe* it.") (emphasis added). There is no support in the record for this conjecture. There was no information available to Officer Snyder at the time of arrest that the cocaine "had been in plain view of the passengers," or that the passengers had "observe[d] it" while inside the vehicle. See JA 33, 40-41.

information indicating that [respondent] was in the car when [the drugs were placed behind the armrest], and none that [respondent] heard or took part in any conversation on the subject." *Di Re*, 332 U.S. at 593.

The Solicitor General's claim that "the presence of drugs – without more – immediately reveals criminal activity," and thus supports "an inference that all of the car's occupants were aware of, and hence involved with, the drugs," Br. U.S. 15 (citation omitted), is unsubstantiated by the record and inconsistent with common experience. Certainly, the innocent graduate student who is offered a ride home by a friend after a late-night party will not search underneath the seat or examine the glove compartment before accepting the ride home. Similarly, the office worker who offers to drive two colleagues to a weekend beach house will not demand the right to search the bags of his invitees before starting the trip. As Justice Powell noted:

> [T]here are countless situations in which individuals are invited as guests into vehicles the contents of which they know nothing about, much less have control over. Similarly, those who invite others into their automobile do not generally search them to determine what they may have on their person; nor do they insist that any handguns [or drugs] be identified and placed within reach of the occupants of the automobile. Indeed, handguns [and drugs] are particularly susceptible to concealment and therefore are less likely than are other objects to be observed by those in an automobile.

County Court of Ulster County v. Allen, 442 U.S. 140, 174 (1979) (Powell, J., dissenting).

As a doctrinal matter, not only does the Solicitor General's proposal contradict the rule of *Di Re*, it also

ignores this Court's repeated warnings that the definition of probable cause and reasonable suspicion should not be reduced to "a neat set of legal rules." *Gates*, at 232; *see also Ornelas v. United States*, 517 U.S. 690, 695-96 (1996). When drugs or contraband are found hidden inside an automobile containing multiple occupants, a more nuanced analysis is required. For example, Professor LaFave concludes that "[w]hen the nature of the ongoing criminal activity is such that its existence is not evident to others in the vicinity, it is then necessary to give careful consideration to those aspects of the extent and nature of the association which may indicate that the associate is also an accomplice." 2 LaFave, *supra* § 3.6(c) at 311 (footnote omitted). Instead of the hard-and-fast rule proposed by the Solicitor General, Professor LaFave reads *Di Re* as "intimat[ing] that when the offense committed by the other person *does* involve an 'act visibly criminal,' then the chances are substantially greater that a companion of the offender is something more than a mere bystander." *Id.* at 313.

Here, the nature of the criminal conduct involved – cocaine possession – was not evident to others on the scene. Officer Snyder was unaware of the drugs until he searched the car. As noted, respondent made no furtive gestures or other suspicious movements. In sum, there were none of the telltale signs of suspicious behavior often observed by police to support the inference that respondent was an accomplice in criminal behavior. *See Id.* at 312, n.108 (listing cases where suspicious conduct of person supported inference that he was involved with the criminality of his traveling companions).

B. Petitioner's Rule Extends Beyond Cars, and Would Effectively Overrule *Ybarra* and *Di Re*

Petitioner's argument cannot be confined to contexts involving multiple occupants of automobiles. Indeed, petitioner recognizes the breadth of its reasoning and invites the Court to endorse the arrest of multiple persons on the scene when police uncover hidden evidence of criminality. *See* Br. Pet. 28-29. For instance, petitioner opines that multiple arrests are lawful when an officer finds drugs "in a motel room occupied by several people." By not limiting his proposed rule in any meaningful way, petitioner is essentially urging this Court to create a new, *per se* rule that police discovery of contraband provides probable cause to arrest everyone on the scene, even when the contraband *is not in plain view*. This rule would effectively overrule both *Ybarra* and *Di Re*.

Petitioner criticizes the ruling below because it "would wreak havoc in other probable cause applications." Br. Pet. 28.[8] The narrow ruling below, however, is consistent with the particularized suspicion requirement mandated by *Di Re* and *Ybarra* which was designed to bar dragnet searches and arrests. A hypothetical illustrates the serious implications of petitioner's argument. Assume Baltimore police come to A's apartment at 3:00 a.m. in response to a noise complaint. A is having a party with 20 friends. After telling A to lower the music, the police obtain A's consent to search the premises for weapons or drugs. An officer lifts a pillow on the couch and discovers a large amount of money and several baggies of cocaine. After A and his friends refuse to talk about the money or drugs, the police arrest everyone. If petitioner's rule is applied to this hypothetical, the discovery of the hidden contraband provides probable cause to arrest everyone on the scene. Under this scenario, several innocent persons will be arrested, and those who are unable to post bail may spend several weeks incarcerated before their case is dismissed or resolved.[9]

Although the discovery of the drugs indicated criminal conduct and may have provided probable cause to *search* the premises, it did not provide authority to *arrest* all 20 of A's friends because "where the standard is probable cause, [an arrest] of a person must be supported by probable cause particularized with respect to that person." *Ybarra*, 444 U.S. at 91. *See also*, *United States v. Connolly*, 479 F.2d 930, 936 (9th Cir. 1973) ("Even certain knowledge that contraband is within a dwelling does not constitute probable cause to arrest whoever happens to be inside."); 2 LaFave,

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[8] Petitioner offers the hypothetical of four persons sitting at a card-table with a "smoking gun" in the middle of the table and one of the persons slumped over the table (apparently dead or shot) as an illustration of the possible havoc wrought by the ruling below. Petitioner contends that it would be foolish to hold that an officer could only arrest the homeowner or the person closest to the gun. Petitioner's hypothetical is not comparable to facts here. As noted, the court below expressly confined its holding to situations where an officer discovers evidence of criminality or contraband *not* in plain view of the occupants. Pet. App. 2a, 23a. In petitioner's hypo, the gun and dead body are obviously in plain sight of the other persons sitting at the table.

[9] See Karl I. Moline & Faye S. Taxman, *Pretrial Processing in Baltimore City, MD: A Status Report*, Bureau of Governmental Research 5 (Final Draft, March 2003) (reporting that arrestees "*detained to trial* spend an average of 77.9 days incarcerated awaiting trial"). Other studies of Maryland's pretrial process also found that arrestees unable to obtain bail may wait 30 days or longer before their cases are resolved or dismissed. See The Abell Foundation, *The Pretrial Release Project: A Study of Maryland's Pretrial Release and Bail System* 34-35 (Sept. 12, 2001); Caitlin Francke, *Police Powers of Arrest Under Study; Judges Favor Shifting Authority to Prosecutors*, Baltimore Sun, December 11, 1998 at 1B (quoting Baltimore Circuit Administrative Judge Joseph Kaplan: "It's just not right for them to charge people when you can't prove the case and have them sit in jail for a long time."); Douglas L. Colbert, *For Want of a Lawyer, Many Do Time; 60% of Defendants Spend Weeks in Jail, but Never go to Trial*, Baltimore Sun, April 7, 1996 at 6F (noting a study of Baltimore City showing "that nearly 60 percent of defendants' cases were either dismissed or not prosecuted after the defendant spent 47 days in jail").

supra § 3.1(b) at 9 ("probable cause to search a particular place may exist without there also being probable cause to arrest a person who occupies the place.") (citation omitted). If it is unreasonable to arrest all 20 of A's friends, then the arrest of respondent was equally unreasonable. Although the hypothetical envisions arresting 20 people while this case involves only three persons, under petitioner's logic, the arrests are justified in both situations. Both rest on the premise that where drugs are found in a confined spatial context and there is a sufficient personal nexus between the individuals in that space, the circumstances justify an inference that everyone was culpably involved with the drugs. *See* Br. Pet. 22-23 (listing criteria that justified arrest of respondent and the occupants).

Petitioner insists that *Ybarra* is distinguishable from the case *sub judice*. Petitioner asserts that the search in *Ybarra* "was improper because there was no *connection* or *common enterprise* between the bartender and the customer." Br. Pet. 25 (emphasis added). This description misses the point of *Ybarra*'s holding. Certainly, the officers who executed the search warrant "knew nothing in particular about Ybarra, except that he was present, along with several other customers, in a public tavern at a time when the police had reason to believe that the bartender would have heroin for sale." *Ybarra*, 444 U.S. at 91. Assume, however, that Ybarra was conversing with the bartender – instead of "standing by a pinball machine," *id.* at 88 – when the police arrived. That conversation might have demonstrated a "connection" between Ybarra and the bartender, just as the presence of 20 people at A's party established a "connection or common enterprise" between the occupants. Despite such a "connection," *Ybarra*'s citation to *Sibron v. New York*, 392 U.S. 40, 62-63 (1968), unmistakably indicates that the Court would have still found no probable cause to arrest or search Ybarra. As the cite to *Sibron* explains, "[t]he inference that persons who talk to narcotics addicts [over a period of eight

hours] are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security. Nothing resembling probable cause existed [here]." *Id.*

The lack of probable cause in *Ybarra* was not based on the absence of a "connection or common enterprise between the bartender and the customer." The reason there was no probable cause to arrest in *Ybarra* is the same reason there was no probable cause to arrest all of A's friends (in the hypothetical) or respondent in this case: the police lacked an individualized basis for suspecting that the particular arrestees had committed a crime. Mere conversations between Ybarra and the bartender might have established a "connection" between the two, but that would not be enough to justify searching or arresting Ybarra. Likewise, the gathering of 20 people at A's apartment for a party established a "connection or common enterprise" between those persons and premises where police subsequently discovered evidence of crime. But that "connection" does not justify an inference that each was an accomplice to criminal behavior.

The reasoning and result in *Di Re* controls this case. Petitioner and its *amici*, however, suggest that *Di Re* supports their position that the discovery of narcotics in a vehicle provides probable cause to arrest all of the occupants. According to petitioner, *Di Re* involved the "rare situation" where police "have specific information that forecloses a reasonable belief that one of the occupants was guilty, thus negating probable cause to arrest that person," Br. Pet. 24, even though Di Re was present in a vehicle where there was probable cause to search for counterfeit coupons and probable cause to arrest the other occupants. Petitioner also insists that dicta from *Di Re* "recognized that in other circumstances an inference *could* be drawn that one who accompanies another to a criminal enterprise is not an

innocent bystander." *Id.* at 25 (citations omitted). By contrast, the argument continues, respondent's case provided "no such basis for disregarding the inference that all three passengers were aware of the cocaine." Br. U.S. 22.

Petitioner's analysis of *Di Re* is not convincing, and contrary to Professor LaFave's conclusion that *Di Re* "makes it clear that companionship with an offender at the very time of the latter's criminal conduct is not inevitably sufficient to establish probable cause for arrest of the companion. This is particularly true when, as in *Di Re*, it is very possible for the criminal conduct to be occurring without the knowledge of the companion." 2 LaFave, *supra* § 3.6 (c) at 310. Petitioner's analysis of *Di Re*, like its interpretation of *Ybarra*, is mistaken for several reasons. First, the prosecution has the burden of establishing probable cause for a warrantless arrest. *See Beck v. Ohio*, 379 U.S. 89, 97 (1964); *Illinois v. McArthur*, 531 U.S. 326, 328 (2001) (Souter, J., concurring). Thus, respondent had no obligation to bring forth "specific information," Br. Pet. 24, or other evidence to establish a lack of probable cause for his arrest.[10] More importantly, the same factors that caused the *Di Re* Court to find no probable cause to arrest Di Re are present in respondent's case. *Di Re* observed:

[10] The Solicitor General wrongly suggests that it matters to the probable cause determination that "[n]one of [the occupants of the vehicle] acknowledged exclusive ownership of the drugs when questioned by Officer Snyder," nor "did any of them express surprise at the discovery of the drugs." Br. U.S. 22. There are legitimate reasons why a person questioned by the police would not acknowledge or deny ownership of illegal narcotics that were found hidden inside the car he was riding in, or why that person would not express surprise or reveal other emotions in response to an officer's interrogation about illegal narcotics. The Self Incrimination Clause of the Fifth Amendment protects drivers and passengers from incriminating themselves in these situations, and it is a federal crime to make a false statement to a federal law enforcement officer, *see* 18 U.S.C. § 1001(2) (2002), and a crime in Maryland, *see* Md. Code Ann., § 9-501 (2002), to make a false statement to a police officer.

> [A]t the time of the arrest the officers had no information implicating Di Re and no information pointing to possession of any coupons, unless his presence in the car warranted that inference. Of course they had no information hinting further at the knowledge and intent required as elements of the felony under the statute.

332 U.S. at 592. Here, at the time of respondent's arrest, the only information that supported Officer Snyder's inference that respondent knew of the drugs was his presence in the suspected car. Respondent "made no gestures indicative of criminal conduct, made no movements that might suggest an attempt to conceal contraband, and said nothing of a suspicious nature to the police officer[]." *Ybarra*, 444 U.S. at 91. And, as in *Di Re*, Officer Snyder had "no information hinting further at the knowledge and [dominion or control] required as elements of the felony under the [Maryland] statute." 332 U.S. at 592. Officer Snyder's inference that respondent was aware of the drugs turned solely on respondent's presence in the vehicle, the same inference that *Di Re* found insufficient to justify an arrest. *See Id.* at 593 ("[I]f the presence of Di Re in the car did not authorize an inference of participation in the [conspiracy], it fails to support the inference of any felony at all . . . Presumptions of guilt are not lightly to be indulged from mere meetings.").

C. Rulings Since *Di Re* Have Not Undermined the Validity of *Di Re*; Rather, These Rulings Support the Conclusion That, Under the Facts, There Was No Probable Cause to Arrest Respondent

The holdings – as opposed to dicta – in *Wyoming v. Houghton*, 526 U.S. 295 (1999) and *County Court of Ulster County v. Allen*, 442 U.S. 140 (1979), do not support petitioner's position. As petitioner concedes, both of these cases were "decided in contexts other than probable cause to

arrest." Br. Pet 18. *Houghton* concerned whether the automobile exception permits a search of a passenger's purse found inside a car absent individualized suspicion that contraband is in the purse. *Houghton*'s holding was straightforward: "We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search." 526 U.S. at 307. To be sure, *Houghton* creates an exception to the "individualized probable cause" requirement for *packages* and *containers* found inside a vehicle. *Id.* at 302. That result was compelled by the unique history of the automobile exception, *id.* at 300-01, which concerns an officer's *search* authority when probable cause exists that a vehicle contains criminal evidence. This case, however, concerns an officer's *arrest* authority, and thus, does not implicate the same law enforcement and diminished privacy interests involved in car searches.

More importantly, rather than undermining "the continuing vitality of *Di Re*," Br. U.S. 7, "*Houghton* actually reaffirms *Di Re*." 3 LaFave, *supra* § 7.2 at 124 (3d ed. 1996) (Pocket Part 2003). *Houghton* specifically distinguishes a search of a passenger's property from a search of the passenger's person, which was invalidated in *Di Re*. The former search is reasonable because of the "reduced expectation of privacy" associated with property found in a vehicle. *Houghton*, 526 U.S. at 303. It is unreasonable, however, to search a passenger's person absent "individualized probable cause." *Id.* at 302. "[T]he degree of intrusiveness upon personal privacy and indeed even personal dignity," makes a search of the person "differ substantially from the package search at issue" in *Houghton*. *Id* at 303. Because *Houghton* distinguished searches of property from the "significantly heightened protection afforded against searches of one's person," *id.*, petitioner wrongly suggests that "[t]he facts and rationale [of *Houghton*] are quite analogous to the issue here of probable

cause to arrest a passenger." Br. Pet 19. If the "traumatic consequences," *Houghton*, 526 U.S. at 303, associated with a personal search are not to be visited upon a passenger due to his "mere presence in a suspected car," *Di Re*, 332 U.S. at 587, the far more "traumatic consequences" inherent in an arrest surely cannot be visited upon a passenger either. *Cf. Atwater v. Lago Vista*, 532 U.S. 318, 364-65 (2001) (O'Connor, J., dissenting); *United States v. Watson*, 423 U.S. 411, 428 (1976) (Powell, J., concurring).

Similarly, *Allen* does not support the arrest of respondent. *Allen* upheld the constitutionality of a statutory presumption, "as applied to the facts of th[at] case," 442 U.S. at 163, that provided that the presence of a firearm in a car is presumptive evidence of its illegal possession by all of the vehicle's occupants. The facts in *Allen* were "tantamount to [a case] in which the guns were lying on the floor or the seat of the car in the *plain view* of the three other occupants of the automobile. In such a case, it is surely rational to infer that each of the [occupants] was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons." *Id.* at 164-65 (emphasis added). Here, the critical fact is that the money and drugs were *not* in plain view of the occupants or Officer Snyder. Thus, the result in *Allen* does not affect this case. The judgment below addressed only the lawfulness of respondent's arrest as a mere passenger. Whether there might be probable cause to arrest the driver or owner of a vehicle under these circumstances or different facts, is a question the Court need not address in this case. *See Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-47 (1936) (Brandeis, J., concurring); (explaining the Court should not decide "'questions of a constitutional nature unless absolutely necessary to a decision of the case.'") *cf. Alabama v. Shelton*, 535 U.S. 654, 676-77 (2002) (Scalia, J., dissenting).

CONCLUSION

For the reasons stated above, the judgment of the Maryland Court of Appeals should be affirmed.

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